CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 489

MARY MORTON WEST, OSAGE ALLOTTEE No. 192,
APPELLANT,

vs.

OKLAHOMA TAX COMMISSION

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED DECEMBER 23, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 489

MARY MORTON WEST, OSAGE ALLOTTEE No. 192, APPELLANT,

vs.

OKLAHOMA TAX COMMISSION

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

INDEX

	Original	Print
Proceedings in Supreme Court of Oklahoma	1	1
Petition in error	2	1
Exhibit "A"—Proceedings before Oklahoma Tax Commission	8	4
Caption and appearances	8	4
Estate tax return	11	4
Notice of tax liability	13	5
Order assessing tax	17	8
Protest of Mary Morton West	19	9
Stipulation as to certain facts	26	12
Final order of Commission	33	15
Notice of appeal from assessment	37	17
Letter enclosing payment of tax	43	20
Certificate of Acknowledgment by Oklahoma Tax Commission	44	21
Certificate of Secretary (omitted in printing)	45	
Stipulation for consolidation of causes	46	22
Order consolidating causes	48	23
Opinion, Bayless, J., June 18, 1946	49	23
Petition for rehearing	61	30
Order granting rehearing, withdrawing opinion and adopting substitute opinion (omitted in printing)	64	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JAN. 30, 1948.

—4586

	Original	Print
Opinion, Bayless, J., October 28, 1947	65	32
Dissenting opinion, Hurst, C. J.	77	39
Motion for order staying mandates	81	41
Order staying mandates	83	42
Petition for appeal and prayer for reversal	84	43
Assignments of error	87a	45
Order allowing appeal	88	47
Citation and service (omitted in printing)	90	
Bond on appeal (omitted in printing)	92	
Praecipe for transcript of record	94	48
Clerk's certificate (omitted in printing)	126	
Statement of points to be relied upon	127	50
Designation of parts of record to be printed	129	52
Order noting probable jurisdiction	131	53

[fols. 1-2] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 31948

MARY MORTON WEST, OSAGE ALLOTTEE No. 192, Plaintiff in Error,

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

PETITION IN ERROR—Filed September 9, 1944

The said Mary Morton West, Osage Allottee No. 192, plaintiff in error, complains of said defendant in error, for that the said Oklahoma Tax Commission, on the 14th day of August, 1944, rendered and entered a judgment and order whereby said Oklahoma Tax Commission ordered, adjudged and decreed that Oklahoma inheritance, transfer and estate taxes in the amount of $4,263.15 were assessed against the estate of Charles West, Jr., deceased, and ordered the same to be paid by said estate to said Oklahoma Tax Commission, in a certain proceeding then pending before said Commission wherein the protest of plaintiff in error was heard by said Oklahoma Tax Commission.

That the original record of the appeal, duly certified and attested, of all proceedings in said cause before said Oklahoma Tax Commission is hereunto attached, marked "Exhibit A", and made a part of this petition in error; and the said Mary Morton West avers that there is error in the said record and proceeding, in this, to-wit:

[fol. 3] Said Oklahoma Tax Commission erred in not rendering judgment for the plaintiff in error and in rendering judgment assessing an Oklahoma inheritance, estate and transfer tax of $4,263.15 against the estate of Charles West, Jr., deceased, and ordering same paid by said estate to said Oklahoma Tax Commission, for the following reasons, to-wit:

1. That no tax is due under the decision of the Supreme Court of Oklahoma in the case of Childers v. Pope, 119 Okl. 300, 249 Pac. 726, or at least not the amount assessed.
2. That the statute of the State of Oklahoma, to-wit, Sec-

tions 988, to 989t, inclusive, Title 68, Oklahoma Statutes 1941, under which said order of assessment was made, and said statute as applied and enforced to protestant's disadvantage by said Oklahoma Tax Commission in the making of said assessment and order, violates the 14th Amendment to the Constitution of the United States by imposing an estate tax on this estate of a part thereof which is constitutionally immune therefrom, and abridges and denies this protestant's privileges and immunities guaranteed to her by the constitution of the United States, the Osage treaties and laws, and deprives her of her property without due process of law and denies to her the equal protection of the law.

3. That said state statute, and said statute as applied and enforced to protestant's disadvantage by said Oklahoma Tax Commission in this case, in violation of the 14th [fol. 4] Amendment to the Constitution of the United States, Osage treaties and laws, imposes an inheritance and transfer tax which includes in its measure property which protestant does not receive, to-wit: (a) the value of the corpus of the undivided portion of the minerals in and under Osage County held by the United States in trust for the Osage Tribe of Indians, from which decedent during his life was permitted to receive a part of the income; (b) the value of a portion of the Osage Trust Fund determined and held by the United States, from which the decedent during his life was permitted to receive a part of the interest thereon; (c) a fractional part of the money from Osage tribal minerals received and held in trust by the United States for the Osage Tribe after payment therefrom to the decedent during his lifetime of certain annuities as provided by law.

4. That said state statute, and said statute as applied and enforced to protestant's disadvantage by said Oklahoma Tax Commission in this case, in violation of the Constitution of the United States, Osage treaties and laws, imposes on protestant an inheritance and transfer tax which includes in its measure property of the United States and property held by the United States in trust for the Osage Tribe of Indians in which decedent and this protestant had and have no individual vested property interest.

[fol. 5] 5. That said state statute, and said statute as applied and enforced to protestant's disadvantage by said

Oklahoma Tax Commission in this case, contrary to the 14th Amendment to the Constitution of the United States, Osage treaties and laws, imposes on protesant an inheritance and transfer tax which includes in its measure property held in trust by the United States long prior to the admission of the State of Oklahoma into the Union and the enactment of its first inheritance and estate tax law, and under which trust no transfer thereof took place upon the death of decedent.

6. That said state statute, and said statute as applied and enforced to protestant's disadvantage by said Oklahoma Tax Commission in this case, would interfere with and defeat the United States in performing its governmental duty to the Osage Tribe of Indians, including this protestant, and diminish the trust estate, contrary to Osage treaties and laws, which trust estate is to be delivered by the trustee to the remaindermen in 1983.

7. That the title to part of said property included in the measure of said tax is in the United States and is constitutionally immune from state taxation.

8. That if any property right passed at the death of the decedent to this protestant, it did so by virtue of federal law and not by state law.

[fol. 6] 9. That said state statute, and said statute as applied and enforced to protestant's disadvantage by said Oklahoma Tax Commission in this case, violates the rights of protestant and of the United States under Section 8 of Article 1 of the Constitution of the United States relating to commerce with the Indian Tribes.

10. That said state statute, and said statute as applied and enforced to protestant's disadvantage by said Oklahoma Tax Commission in this case, violates Section 1 of the Enabling Act (34 Stat. L. 267-278) of the State of Oklahoma.

11. That by reason of Constitutional immunity, said minerals, trust fund and proceeds from said minerals held by the United States in trust for the Osage Tribe have never been subjected to state taxation.

12. That Congress has never granted authority to the State of Oklahoma to levy a tax upon the transfer of property held in trust by the United States for the Osage Tribe of Indians.

Wherefore, plaintiff in error prays that said judgment so rendered may be reversed, set aside and held for naught, and that a judgment may be rendered in favor of the plaintiff in error, and against the defendant in error, that the plaintiff in error be restored to all rights that she has lost by the rendition of such judgment, that this court decree [fol. 7] that said estate is not liable to the Oklahoma Tax Commission or the State of Oklahoma for any inheritance, estate or transfer tax, that plaintiff in error recover her costs herein and for such other relief as to the court may seem just.

(Signed) Mary Morton West, Osage Allottee No. 192, by Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, Her Attorneys.

[fol. 8] EXHIBIT "A" TO PETITION IN ERROR

BEFORE THE OKLAHOMA TAX COMMISSION

Case No. 31948

In the Matter of the Inheritance Tax on the Estate of CHARLES WEST, JR., Deceased, Probate No. 4664, Osage County, Oklahoma.

Transcript of Tax Proceedings Case No. 1743

Appeal from Order of Oklahoma Tax Commission Issued August 14, 1944

APPEARANCES: McCoy, Craig & Pearson, Pawhuska, Oklahoma, Attorneys for Mary Morton West, Protestant.

E. L. Mitchell, A. L. Herr, C. W. King, Attorneys for Oklahoma Tax Commission.

[fols. 9-10] Be it remembered, That on the 22nd day of October, 1942, Joe LaBenske, Administrator of the Estate of Charles West, Jr., deceased, filed with the Oklahoma Tax Commission his return of the properties of said estate, the same being as follows:

(Here follows 4 Photolithographs, side folios 11, 11a, 11b, 11c-12.)

RETURN TO BE FILED WITH THE OKLAHOMA TAX COMMISSION IN DUPLICATE AND NONRESIDENT ESTATES

Date Received: Perforated 10-30-42

STATE OF OKLAHOMA
Estate Tax Return

Attorneys: Frank Nolan, Fairfax, Oklahoma

IN THE MATTER OF THE ESTATE OF Charles West, Jr., DECEASED.

Residence at Death Fairfax, Oklahoma Date of Death _____ Date of Birth September 2,1940

County Court of Osage County, Okla. Probate No. 4464

GROSS ESTATE

Sch.	Classification of Property	Amount	
A	REAL ESTATE, OIL AND GAS LEASES, ETC. (From Schedules A-1 and A-2, Page 3)	$ 24,294.55	
B	STOCKS AND BONDS (From Schedule B, Page 3)	66,485.06	
C	PERSONAL PROPERTY (From Schedules C-1 and C-2, Page 3)	34,527.79	
D	LIFE INSURANCE (From Schedule D, Page 3)	None	
E	TRANSFERS DURING LIFETIME (From Schedule E, Page 3)	None	
	TOTAL GROSS ESTATE WITHIN OKLAHOMA	$ 125,307.40	
F	PLUS TOTAL ESTATE OUTSIDE OKLAHOMA (From Schedule F, Page 4)	None	
	TOTAL GROSS ESTATE		$ 125,307.40

DEDUCTIONS

Sch.	Classification	Amount	
G	DEBTS AND MORTGAGES (From Schedule G, Page 4)	604.87	
H	TAXES, EXPENSES, ETC. (From Schedule H, Page 4)	5,902.99	
	TOTAL DEDUCTIONS		$ 6,507.86
	TOTAL NET ESTATE (Line 8 less Line 11)		$118,799.54
	If a part of the assets of the estate are located outside the State, drop down to line 12 and continue. LESS STATUTORY EXEMPTION ALLOWED		$

Charles West, Jr., was a full-blood, restricted member of the Osage Tribe of Indians and was never issued a certificate of competency during his life time. By reason thereof this estate is restricted and is in the possession and under the control and supervision of the Secretary of the Interior.

The Department of the Interior denies any estate tax liability on this estate to the State of Oklahoma. The Administrator joins the Department of the Interior in denying any estate tax liability to the State of Oklahoma.

TOTAL TAX	
PLUS ADDITIONAL TAX TO ABSORB _____% OF 80% OF FEDERAL ESTATE TAX	$
PENALTY	$
TOTAL TAX AND PENALTY	$

STATE OF OKLAHOMA, Osage COUNTY } AFFIDAVIT

Joe LaBenske the undersigned, do ~~XXXX~~ hereby solemnly swear, or affirm, that the above named decedent died on the 11th day of September A.D. 40 the Probate Court of Pawhuska, Oklahoma granted letters ~~XXXXXXXX~~ upon this estate and that Joe LaBenske his knowledge and information that he had ~~XXX~~ no knowledge or information of any transfers made, or trusts created, in fraud of the property of said decedent, sale of personal property, or otherwise, between the gross estate of said deceased as set out in this report and his knowledge and information that he had ~~XXX~~ no knowledge or information of any transfers made, or trusts created, in contemplation of death, or intended to take effect at or after death, except as shown on Schedule H; that to the best of his knowledge and belief the value given for each item of property as listed was the full and fair cash market value of the same at the time of death; that where the interest passed by reason of the decedent's death was a life interest, or was held by him as a joint tenant, the value of the property in which such interest existed has been written at the end of each to indicate that no property embraced in that particular item was owned by said decedent.

Joe LaBenske, Administrator
Name and Title

Fairfax, Oklahoma
Address

Subscribed and sworn to before me this the 22nd day of October A.D. 42

D.W.Jackson
Notary Public.

My commission expires Feb. 24, 1944

SEAL

SCHEDULE A-1. REAL ESTATE.

List separately each parcel or tract of real property in the State of Oklahoma of which the decedent died seized or possessed, including the homestead. If town or city property, give street number as well as lot and block number.

The law provides for a homestead exemption of not to exceed $5,000.00 (Sec. 2 (a) of the Act). Identify the property claimed as a HOMESTEAD by adding the word "Homestead" after the legal description thereof in the schedule below. CLAIM HOMESTEAD EXEMPTION below. Mortgages or other liens against the property claimed as homestead should be listed as deductions in Schedule G. Include decedent's interest in jointly owned property.

		Annual Rents or Income to Date of Death 2.	Full Appraised or Fair Cash Value at Death 3.
(If more space is required, attach additional sheets, marking same Schedule "A-1.") TOTALS			

TOTAL (Columns 2 and 3)..... $ 19,059.43

Deduct homestead exemption here (not in excess of $5,000.00)..... $ 5,000.00

TOTAL APPRAISED OR FAIR CASH VALUE OF REAL ESTATE AT DATE OF DEATH..... $ 14,059.43

SCHEDULE A-2. OIL, GAS OR MINERAL LEASES, RENTALS, ROYALTIES AND LEASEHOLD INTEREST IN STATE OF OKLAHOMA, including decedent's interest in jointly owned property.

Complete Legal Description	Character of Interest Such as Lease, Royalty, etc.	Annual Income	Appraised or Fair Cash Value at Death
1 and 919/2520ths share or head rights in and to the Osage Indian Mineral Reservation(Restricted property in exclusive control of the Secretary of the Interior)	Royalty	$450.00	$10,235.12
(If more space is required, attach additional sheets, marking same Schedule "A-2.")			

TOTAL VALUE OF OIL, GAS OR MINERAL LEASES, RENTALS AND ROYALTIES..... $ 10,235.12

TOTAL OF SCHEDULES A-1 and A-2, Real Estate, Leases, etc..... $ 24,294.55
To be carried forward to Page 1.

SCHEDULE B. STOCKS AND BONDS.

BONDS: Enter below name of issuing corporation together with number and date of all bonds. STOCKS: Enter below name of corporation and number of shares. No kind of stocks or bonds is exempt from Inheritance Tax. Include decedent's interest in stocks and bonds held jointly with others.

Complete Legal Description	Par Value 1.	Interest or Dividend Date 2.	Accrued Interest or Dividends 3.	Full and True Value at Death 4.
2-7/8% Treas. Bond of 1955-60	$50,500.00		None	$50,500.00
3-1/4 " " " 1944-46	1,600.00		"	1,600.00
2-3/4 " " " 1945-47	1,000.00		"	1,000.00
2-3/4 " " " 1956-59	11,900.00		"	11,900.00
Osage Federal Sav & Loan	1,200.00		"	1,200.00
Trust Stock	925.00		"	231.31
Share Account	53.57		"	53.75
(If more space is required, attach additional sheets, marking same Schedule "B.")				
TOTALS.....				

TOTAL STOCKS AND BONDS, including interest and dividends (Columns 3 and 4)..... $ $66,485.06

To be carried forward to Page 1. 66,485.06

Complete Legal Description	Assessed Value of Undivided Interest of Decedent	Assessed Value of Decedent's Interest in Real Estate	Full Appraised or Fair Cash Value of Decedent's Interest
Lots 1 & 2; E½ of NW¼ of Sec 31, Twp. 24N Rge 4 EIM	985.00	None	966.18
S½ of Lot 7 & all Lot 8, Block 27, Original Townsite of Fairfax, Oklahoma, (Homestead)	1,715.00	None	6,000.00
1/18 INTEREST IN E½ SW¼; W½ SE¼ Sec. 23 Twp. 28N Rnge 6 E IM,	63.88	None	133.33
N½ SW¼; SW¼ SW¼ Sec. 1 Twp. 22N Rge 8E & NW¼ NW¼ sec. 12, Twp, 22N Rge 8E, IM,	38.00	None	133.33
S½ NW¼; NE¼ SW¼ Sec 4 & SE¼ NE¼ Sec 5 Twp 23N Rge 7 EIM.	43.00	None	106.66
SE¼ Sec 27 Twp 21N Rge 10E	21.00	None	31.33
S½ SE¼ SE¼ Sec 36 Twp 21N Rge 10E	3.50	None	3.33
1/6 INTEREST IN Lot 1, S½ NE¼ Sec 1 Twp 24N Rge 5E	153.00	None	1,391.66
Lots 3 & 4; SE¼ NW¼ Sec 6 Twp 24N Rge 6E	130.00	None	340.00
SE¼ SE¼ Sec 36 Twp 25N Rge 5E	48.50	None	100.00
Lot 4 Sec 31 Twp 25N Rge 6E	50.00	None	100.00
Lots 1 & 2; NW¼ NE¼; E½ NW¼ Sec 30 Twp 23N Rge 11E	69.00	None	160.00
1/3 INTEREST IN			
NE¼ SE¼ sec 1 Twp 24N Rge 5E & Lots 6 & 7; SE¼ SW¼ Sec 6 T. 24, R6	395.00	None	1,833.33
Lots 3 & 4; S½ NW¼ Sec 5 Twp 28N Rge 8E	303.33	None	785.00
SE¼ NE¼; E½ SE¼ sec 24, Twp 28N Rge 7E & NE¼ NE¼ Sec 25 T28N, R7E	385.00	None	800.00
Lots 3 & 4; E½ SW¼; SW¼ SE¼ Sec 30 Twp 23N Rge 11E	138.33	None	320.00
Lots 3 & 4 Blk 24 Ot Fairfax Okla.	666.66	None	1,666.66
Lots 4 & 5 Blk 32 OT Fairfax, Okla.	480.00	None	600.00
1/4 INTEREST IN NW¼; N½ NW¼ SE¼ Sec 14 Twp 21 N Rge 9E	96.25	None	90.00
Lots 1 &2; NE¼ ; E½ NW¼ sec 7 Twp 28N Rge 9E	550.00	None	1,148.62
SE¼ Sec 6 Twp 28N Rge 9E	287.25	None	600.00
NE¼; NW¼; SE¼ Sec 8 Twp 28N Rge 9E	862.50	None	1,800.00
E½ SW¼; N½ SE¼ Sec 18 Twp 28N Rge 8E	231.25	None	500.00
Lot 4; SW¼ NW¼; N½ NW¼ SW¼ sec 2 Twp 24N Rge 10E	53.75	None	125.00
S½ S½ SE¼ NE¼; N½ N½ NE¼ SE¼; S½ S½ NE¼ SE¼; E½ SE¼ NW¼ SE¼; and S½ N½ NE¼ SE¼; N½ SE¼ NE¼ SE¼ Sec 26 Twp 22 N Rge 9 E	48.75	None	25
Lots 4 & 5 Block 35 OT Fairfax, Okla	310.00		300
Total	$8,127.95		$19,05

SCHEDULE C-1. PERSONAL PROPERTY

List hereunder all CASH on hand or on deposit, NOTES, MORTGAGES, ACCOUNTS RECEIVABLE due at date of death, CONTRACTS OF SALE and decedent's INTEREST IN PARTNERSHIPS located both within and without the State of Oklahoma. Due dates of notes and mortgages should be clearly shown, together with accrued interest from last payment to the date of death. Include decedent's interest in joint accounts, deposits, etc.

Description of Items	Name of Bank, Trustee or Debtor	Face Value (1)	Accrued Interest (2)	Appraised or Fair Cash Value at Death (3)
Trust Funds in The United States Treasury	Secretary of Interior	$4,745.52	None	$4,745.52
Cash surplus in the U.S. Treasury,	Secretary of Interior	$29,046.27	None	29,046.27
(If more space is required, attach additional sheets, marking same Schedule "C-1.")		TOTALS.....	$	$ 33,791.79
		TOTAL COLS. 2 AND 3		$ 33,791.79

SCHEDULE C-2. TANGIBLE PERSONAL PROPERTY.

List hereunder each item of decedent's personal property such as HOUSEHOLD FURNITURE, SILVERWARE, PICTURES, WORKS OF ART, BOOKS, JEWELRY, WEARING APPAREL, LIVE STOCK, AUTOMOBILES, TRUCKS, TOOLS, FARM IMPLEMENTS, FARM PRODUCTS, GROWING CROPS, BUILDINGS ON LEASED PREMISES, STOCKS OF MERCHANDISE, ETC. Include decedent's interest in property held jointly with others.

Complete Description	Location	Appraised or Fair Cash Value at Death
One saddle	Home	$50.00
One lawn mower	"	8.00
One garden hose	"	1.00
Household Furniture	"	676.50
(If more space is required, attach additional sheets, marking same Schedule "C-2.")	TOTAL.....	$ 736.00

TOTAL VALUE OF PERSONAL PROPERTY (Schedules C-1 and C-2) ..... $ 34,527.79
(To be carried forward to Page 1)

SCHEDULE D. LIFE INSURANCE.

List hereunder policies of insurance held on the life of the decedent, however payable; also annuities, cash surrender values, etc. (For exceptions see Instructions.) Proceeds of life insurance policies payable to decedent's ESTATE are taxable. The law, however, provides an exemption, not in excess of $20,000.00 where the insurance is payable to NAMED BENEFICIARIES, but the full amount payable should be listed in the schedule, and exemption claimed below.

Name of Insurance Company	Name of Beneficiary or Trustee	Face Value	Amount Payable at Death
None			
(If more space is required, attach additional sheets, marking same Schedule "D.")	TOTALS.....	$	$

CLAIM EXEMPTION HERE OF THE AGGREGATE AMOUNT OF INSURANCE PAYABLE TO NAMED BENEFICIARIES, BUT IN NO EVENT SHALL SAID EXEMPTION EXCEED $20,000.00..... $ None

TOTAL AMOUNT OF INSURANCE (Less exemptions)..... $ None
(To be carried forward to Page 1.)

SCHEDULE E. TRANSFERS DURING LIFETIME OF DECEDENT.

List hereunder all transfers of property, real, personal, or mixed, or any interest therein, made by decedent which were intended to take effect in possession or enjoyment at or after death, regardless of the date of the transfer.

Likewise list all transfers made by decedent of property, real or personal, or any interest therein, either in trust or by deed, bargain, sale or gift, where such transfers were made without an equivalent in monetary consideration, within two (2) years of the death of the decedent.

Likewise list all transfers of property, real, personal, or mixed, or any interest therein, whether in trust, by deed, bargain, sale or gift, where such transfer was made in contemplation of death.

Legal Description	Name and Address of Transferee	Relation to Decedent	Value at Date of Death or Transfer	
			Assessed Value	Appraised Value
None				
(If more space is required, attach additional sheets, marking same Schedule "E.")				
TOTAL TRANSFERS DURING LIFETIME (To be carried forward to Page 1.)	None			

SCHEDULE F. PROPERTY OUTSIDE OKLAHOMA

List hereunder the total gross value of all real estate, or any interest therein, and all personal property having a taxable situs outside the State of Oklahoma. Debts and mortgages should be listed under deductions, Schedule G.

A statement of the value of the property located outside the State is required only for the purpose of arriving at the percentage of deductions and exemption allowed by Statute in computing tax liability in the Oklahoma estate.

REAL ESTATE, LEASES AND ROYALTIES—Gross Value..... $ None

PERSONAL PROPERTY—Gross Value..... $ None

TOTAL GROSS ESTATE OUTSIDE OF OKLAHOMA..... $ None

SCHEDULE G. DEBTS AND MORTGAGES.

List hereunder all valid debts of the decedent DUE AND OWING AT DATE OF DEATH.

Name and Address of Creditor or Mortgagee	Nature of Claim, Date and Term Thereof	Description of Claim or of Property Pledged	Amount
Palace Trading Company	Grocery Account		$241.00
Vivian Pitts	Sewing		30.00
Big Hill Trading Co.	Dry Goods		49.92
Dr. A. H.Friedman	Dental visit		5.00
Dr. E. N. Lipe	Doctor bill		97.00
Dr. Emil Tholin and Dr.Fredrick Belyeat	Doctor bill		50.00
Mary Gayle Powell	Nurse bill		39.00
Dr. D.M.Ghrist	Doctor bill		11.50
Pauline Blankenship	Nurse bill		30.00
Dr. H.B.Spaulding	Doctor bill		5.00
Dr. C.G.Abbott	Doctor bill		26.50
Physicians and Surgeons	Hospital bill		28.95
	Total		$604.87

FUNERAL EXPENSES $677.00 Monument $ 459.45	1,136.45
ADMINISTRATION EXPENSES	468.52
ATTORNEY'S FEES	698.02
WIDOW'S or FAMILY ALLOWANCE (allowed by the Court and paid)	3,600.00
BEQUESTS: CHARITABLE, RELIGIOUS AND EDUCATIONAL WITHIN THE STATE OF OKLAHOMA. (List like bequests outside of Oklahoma in Schedule I.) (If more space is required, attach additional sheets, marking same Schedule "G.")	None
VALUE UPON WHICH ESTATE TAX PAID WITHIN LAST FIVE YEARS (Identify property included in both estates.)	
TOTAL SCHEDULE H—DEDUCTIONS (To be carried forward to Page 1.)	$ 5,902.99

SCHEDULE I. DISTRIBUTION.

List below names, ages and addresses of heirs, devisees, and legatees of the decedent. If decedent left a life estate in any property listed herein, describe fully below.

Name and Address	Age : Relationship	Net Value of Share or Value of Property Set Aside	
		Collateral Heirs and Others	Lineal Heirs
Opal West, Fairfax, Oklahoma	legal wife	(see note)	
Mary Morton West, Ralston, Oklahoma	mother	(see note)	

Charles West, Jr., died intestate leaving no issue, but a surviving widow, Miss Opal West, Fairfax, Oklahoma, and a surviving mother, Mary West Kenworthy.

There is an act of Congress which prohibits Mrs. Opal West from inheriting any part of the estate of Charles West, Jr., un

[fol. 13] OKLAHOMA TAX COMMISSION

State of Oklahoma

Oklahoma City

J. Frank Martin, Chairman; J. D. Dunn, Vice-Chairman; R. H. Sibley, Member. H. D. Canfield, Secretary.

Estate Tax Division

NOTICE OF TAX LIABILITY

Mr. Frank Mahan, Attorney at Law, Fairfax, Oklahoma.
Re: Estate of Charles West, Jr.

DEAR SIR:

An audit of the estate tax return in the above estate reveals tax liability as shown by the Oklahoma Tax Commission's Order of Assessment, certified copies of which are enclosed herewith.

If the computation is found satisfactory one copy of the Order may be retained for your file, the other to be returned to this office accompanied by a check or draft made payable to the Oklahoma Tax Commission in the amount shown due.

If, however, upon receipt of the order and this notice any interested party is dissatisfied with the findings or assessment of any appraisement made by the Oklahoma Tax Commission, as reflected by said order, they are authorized, within thirty days from and after the date thereof, to file with the Tax Commission their objections, in writing, [fol. 14] specifically setting forth the ground of their objections, and if such objections are filed with the Tax Commission within said thirty day period, same will be set down for hearing on a day convenient for all concerned.

Thanking you for your cooperation in this matter, we are
Yours very truly, Oklahoma Tax Commission. By
—— ——, Director, Estate Tax Division.

encl.

Remittances should be made payable to the Oklahoma Tax Commission and refer to Division.

Palace Trading Company	Grocery Account	$241.00
Vivian Pitts	Sewing	30.00
Big Hill Trading Co.	Dry Goods	49.92
Dr. A. H.Friedman	Dental visit	5.00
Dr. E. N. Lipe	Doctor bill	97.00
Dr. Emil Tholin and Dr.Fredrick Belyeat	Doctor bill	50.00
Mary Gayle Powell	Nurse bill	39.00
Dr. D.M.Ghrist	Doctor bill	11.50
Pauline Blankenship	Nurse bill	30.00
Dr. H.B.Spaulding	Doctor bill	5.00
Dr. C.G.Abbott	Doctor bill	26.50
Physicians and Surgeons	Hospital bill	28.95
	Total	$604.87

FUNERAL EXPENSES $677.00 Monument $ 459.45	1,136.45
ADMINISTRATION EXPENSES	468.52
ATTORNEY'S FEES	698.02
WIDOW'S or FAMILY ALLOWANCE (allowed by the Court and paid)	3,600.00
BEQUESTS: CHARITABLE, RELIGIOUS AND EDUCATIONAL WITHIN THE STATE OF OKLAHOMA. (List like bequests outside of Oklahoma in Schedule I.) (If more space is required, attach additional sheets, marking same Schedule "H.")	None
VALUE UPON WHICH ESTATE TAX PAID WITHIN LAST FIVE YEARS (Identify property included in both estates.)	
TOTAL SCHEDULE H—DEDUCTIONS (To be carried forward to Page 1.)	$ 5,902.99

SCHEDULE I. DISTRIBUTION.

List below names, ages and addresses of heirs, devisees, and legatees of the decedent. If decedent left a life estate in any property listed herein, describe fully below.

Name and Address	Age : Relationship	Net Value of Share or Value of Property Set Aside	
		Collateral Heirs and Others	Lineal Heirs
Opal West, Fairfax, Oklahoma	legal wife	(see note)	
Mary Morton West, Ralston, Oklahoma	mother	(see note)	

Charles West, Jr., died intestate leaving no issue, but a surviving widow, Miss Opal West, Fairfax, Oklahoma, and a survi mother, Mary West Kenworthy.

There is an act of Congress which prohibits Mrs. Opal We from inheriting any part of the estate of Charles West, Jr., u she be of Indian blood. The two parties set out to litigate the Indian blood question in the courts. However, under date of May 5, 1942, the parties settled the litigation by contract of that date and said Settlement Contract was duly approved by the Secretary of the Interior on June 16, 1942, and I understand that the Osage Indian Agency, Pawhuska, Oklahoma, is about to distribute the estate in accordance with the contract which was incorporated in the decree of the Court Court of Osage County, Oklahoma, determining the heirs and ordering distribution of the estate.

A statement of the value of the property located outside the State is required only for the purpose of arriving at the percentage of deductions and exemption allowed by States in computing tax liability in the Oklahoma estate.

REAL ESTATE, LEASES AND ROYALTIES—Gross Value	$ None
PERSONAL PROPERTY—Gross Value	$ None
TOTAL GROSS ESTATE OUTSIDE OF OKLAHOMA	$ None

SCHEDULE G. DEBTS AND MORTGAGES.

List hereunder all valid debts of the decedent DUE AND OWING AT DATE OF DEATH.

Name and Address of Creditor or Mortgagee	Nature of Claim, Date and Term Thereof	Description of Claim or of Property Pledged	Amount
Palace Trading Company	Grocery Account		$241.00
Vivian Pitts	Sewing		30.00
Big Hill Trading Co.	Dry Goods		49.92
Dr. A. H.Friedman	Dental visit		5.00
Dr. E. N. Lipe	Doctor bill		97.00
Dr. Emil Tholin and Dr.Fredrick Belyeat	Doctor bill		50.00
Mary Gayle Powell	Nurse bill		30.00
Dr. D.M.Ghrist	Doctor bill		11.50
Pauline Blankenship	Nurse bill		30.00
Dr. H.B.Spaulding	Doctor bill		5.00
Dr. C.G.Abbott	Doctor bill		26.50
Physicians and Surgeons	Hospital bill		28.95
	Total		$604.87

FUNERAL EXPENSES $677.00 Monument $ 459.45	1,136.45
ADMINISTRATION EXPENSES	468.52
ATTORNEY'S FEES	698.02
WIDOW'S or FAMILY ALLOWANCE (allowed by the Court and paid)	3,600.00
BEQUESTS: CHARITABLE, RELIGIOUS AND EDUCATIONAL WITHIN THE STATE OF OKLAHOMA. (List like bequests outside of Oklahoma in Schedule I.) (If more space is required, attach additional sheets, numbering same Schedule "H.")	None
VALUE UPON WHICH ESTATE TAX PAID WITHIN LAST FIVE YEARS (Identify property included in both estates.)	
TOTAL SCHEDULE H—DEDUCTIONS (To be carried forward to Page 1.)	$ 5,902.99

SCHEDULE I. DISTRIBUTION.

List below names, ages and addresses of heirs, devisees, and legatees of the decedent. If decedent left a life estate in any property listed herein, describe fully below.

she be of Indian blood. The two parties set out to litigate the Indian blood question in the courts. However, under date of May 5, 1942, the parties settled the litigation by contract of that date and said Settlement Contract was duly approved by the Secretary of the Interior on June 16, 1942, and I understand that the Osage Indian Agency, Pawhuska, Oklahoma, is about to distribute the estate in accordance with the contract which was incorporated in the decree of the Court Court of Osage County, Oklahoma, determining the heirs and ordering distribution of the estate.

[fol. 15] OKLAHOMA TAX COMMISSION

State of Oklahoma

Oklahoma City

J. Frank Martin, Chairman; J. D. Dunn, Vice-Chairman;
R. H. Sibley, Member. H. D. Canfield, Secretary.

Estate Tax Division

September 28, 1943.

NOTICE OF TAX LIABILITY

Mary Morton West, Box 114, Fairfax, Oklahoma.
Re: Estate of Charles West, Jr., deceased

DEAR MADAM:

An audit of the estate tax return in the above estate reveals tax liability as shown by the Oklahoma Tax Commission's Order of Assessment, a certified copy of which is enclosed herewith.

If upon receipt of the order and this notice any interested party is dissatisfied with the findings or assessment or any appraisement made by the Oklahoma Tax Commission, as reflected by said order, they are authorized, within thirty days from and after date thereof, to file with the Tax Commission their objections, in writing, specifically setting forth the grounds of their objections, and if such objections are filed with the Tax Commission within said thirty day period, same will be set down for hearing on a day convenient for all concerned.

Thanking you for your cooperation in this matter, we are
Yours very truly, Oklahoma Tax Commission. By
—— ——, Director, Estate Tax Division.

encl.

[fol. 16] OKLAHOMA TAX COMMISSION

State of Oklahoma

Oklahoma City

J. Frank Martin, Chairman; J. D. Dunn, Vice-Chairman; R. H. Sibley, Member. H. D. Canfield, Secretary.

Estate Tax Division

September 29, 1943.

NOTICE OF TAX LIABILITY

Mr. Joe LeBenske, Fairfax, Oklahoma.
Re: Estate of Charles West, Jr., deceased

DEAR SIR:

An audit of the estate tax return in the above estate reveals tax liability as shown by the Oklahoma Tax Commission's Order of Assessment, a certified copy of which is enclosed herewith.

If upon receipt of the order and this notice any interested party is dissatisfied with the findings or assessment or any appraisement made by the Oklahoma Tax Commission, as reflected by said order, they are authorized, within thirty days from and after the date thereof, to file with the Tax Commission their objections, in writing, specifically setting forth the grounds of their objections, and if such objections are filed with the Tax Commission within said thirty day period, same will be set down for hearing on a day convenient for all concerned.

Thanking you for your cooperation in this matter, we are
Yours very truly, Oklahoma Tax Commission. By
J. Frank Martin, Chairman.

encl.

(Here follows 2 Photolithographs, side folios 17-18)

OTC 456-R

STATE OF OKLAHOMA
OKLAHOMA TAX COMMISSION

ESTATE TAX DIVISION

Estate of CHARLES WEST, JR. DECEASED Probate No. 4664 Osage County

Residence at Death Fairfax, Oklahoma Date of Death September 2, 1940

Executor-Administrator Joe LaBeaske Residence Fairfax, Oklahoma

ORDER ASSESSING TAX

The OKLAHOMA TAX COMMISSION, having examined the Administrators detailed return filed with it on the 30th day of Nov., 42 and after verifying same and fully considering all the facts and the law in the matter, and being well and sufficiently advised in the premises, finds:

That the value of said estate at the time of the death of the decedent, including all transfers during lifetime by deed, grant, bargain, sale or gift made in contemplation of death or intended to take effect in possession or enjoyment at or after death, as returned or which has come to the knowledge of the Commission, subject to the debts, costs of administration and exemptions allowed by law, is as follows:

Schedule	Classification of property	Amount	
A	Real Estate, Oil and Gas Leases, etc.	24,294.55	
B	Stocks and Bonds	73,505.80	
C	Personal Property	34,926.69	
D	Life Insurance	00	
E	Transfers During Lifetime	00	
	Total Gross Estate within Oklahoma	$132,727.04	
F	Plus Total Estate outside Oklahoma	$ 00	
	TOTAL GROSS ESTATE		$132,727.04
GH	TOTAL DEDUCTIONS		$ 6,507.86
	TOTAL VALUE OF NET ESTATE		$126,219.18
	Portion of Net Estate within Oklahoma 100 %		$126,219.18
I	Portion Passing to Lineal Heirs	$126,219.18	
I	Portion Passing to Collateral and Other Heirs	$ 00	
	EXEMPTION ALLOWED LINEAL HEIRS		$ 15,000.00
	TOTAL TAXABLE ESTATE		$111,219.18

The Commission further finds that said estate, or the portion thereof within the State of Oklahoma, is subject to estate, inheritance and transfer tax at the following rates:

COMPUTATION OF TAX

Amount of Block	Rate of Tax on Block	Total Tax	Amount of Block	Rate of Tax on Block	Total Tax
10,000.00	1	100.00	40,000.00	5	2,000.00
10,000.00	2	200.00	11,219.18	6	673.15
20,000.00	3	600.00			
20,000.00	4	800.00			
	TOTALS		$111,219.18		$4,373.15
	TOTAL ADDITIONAL TAX TO ABSORB BALANCE OF 80% FEDERAL TAX				$ 00
	TOTAL TAX DUE				$4,373.15
	PENALTY				$ 940.20
	TOTAL TAX AND PENALTY				$5,313.35

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED by the Commission that the tax as computed above be and the same is hereby assessed; and it is further ordered that the administrator, executor, trustee or other person charged with the payment of such tax, shall pay the same to the Oklahoma Tax Commission for the use and benefit of the State of Oklahoma, together with interest, if any, as provided by law.

Ordered and approved this the 20th day of September 19 43

ATTEST: OKLAHOMA TAX COMMISSION

H.D. Canfield (SEAL) Secretary

By J.Frank Martin Chairman

J.D. Dunn Vice-Chairman

R.H. Sibley Member

APPROVED:
Walter Harris
ESTATE TAX DIVISION

Probate No. 4664

IN THE COUNTY COURT

of

Osage County

In The Matter Of The Estate Of

Charles West, Jr. Deceased

ORDER OF OKLAHOMA TAX COMMISSION ASSESSING ESTATE INHERITANCE AND TRANSFER TAXES

Filed September 20, , 19 43

Midge Anderson

Estate Tax Clerk

818

[fol. 19] [File endorsement omitted]

BEFORE THE OKLAHOMA TAX COMMISSION

Oklahoma City, Oklahoma

IN THE COUNTY COURT OF OSAGE COUNTY, OKLAHOMA

Probate No. 4664

In the Matter of the Assessment of Estate Tax Against the ESTATE OF CHARLES WEST, JR., Deceased

PROTEST—Filed October 28, 1943

Comes now Mary Morton West, full blood restricted Osage Allottee No. 192, mother and sole heir of the above named decedent, and protests against the assessment of Oklahoma Estate Taxes entered on September 20, 1943, in the amount of $4373.15, plus penalty of $940.20, and which order was duly mailed by your Honorable Commission to this protestant on September 28, 1943, and for grounds of said protest states:

1. That the statute of the State of Oklahoma, to-wit, Sections 988 to 989t, inclusive, Title 68, Oklahoma Statutes 1941, under which said assessment was made and entered and as applied by your Honorable Commission to the estate and the property thereof of said decedent, is invalid for the reason that the same is in conflict with and repugnant to the Constitution, treaties and laws of the United States [fol. 20] as the same relate to and affect the property of said decedent, this protestant and the Osage Tribe of Indians and the members and estates of members of said tribe.

2. That said assessment is invalid for the reason that this protestant claims immunity of the estate of the said Charles West, Jr., and of each and every item of property composing said estate, as hereinafter set out, from taxation under said statute, by virtue of the provisions of the Constitution, treaties and laws of the United States as the same relate to and affect the property of said decedent, this protestant and the Osage Tribe of Indians and the members and the estates of members of said tribe.

3. That said decedent was an unallotted full blood Osage Indian to whom no certificate of competency had ever been

issued, and that his entire estate was restricted under the laws of the United States. That Charles West, Jr., died September 2, 1940.

[fol. 21] 4. The assessment of the property of the Estate of said decedent is in conflict with the decision of the Supreme Court of the State of Oklahoma in the case of Childers v. Pope, 119 Okl. 300, 249 P. 726.

5. Protest is specifically made against the assessment upon the following items:

A. Upon the value of $24,294.55, representing the items set forth in Schedules A-1 and A-2 of the return filed herein by the administrator. This sum includes the value of 1 and 919/2520ths Osage Headrights owned by the decedent at the time of his death, which headrights represent an undivided interest in the oil, gas, coal and other minerals under all the lands in Osage County, Oklahoma, which interest was reserved to the Osage Tribe of Indians by Act of Congress approved June 28, 1906 (34 Stat. L. 539), and all of which is a trust duly established by the United States for the benefit of the said Osage Tribe of Indians and heirs of the members of said tribe, which has never been subjected to state taxation. The headrights in this case are valued [fol. 22] at $10,235.12. Your protestants show that the remaining value in this particular schedule of $14,459.43 is not includable in the net estate; it was land purchased for the decedent by the use of restricted trust funds which had accumulated to the credit of the decedent from his headrights; the remainder of said real estate was inherited by said decedent from various full blood restricted ancestors, including Osage restricted homestead, which was not and is not subject to state taxation.

B. Upon the inclusion in the net estate of the sum of $73,505.80 set forth in Schedule B under the item of stocks and bonds; said stocks and bonds were purchased by and in the name of the United States and are still so held for said decedent in the exercise of the authority vested in the Secretary of the Interior by Acts of Congress, the purchases having been made from funds accumulated from the aforementioned Osage headrights; said funds and said stocks and bonds at all times since the acquisition thereof having been held by the Secretary of the Interior and never subjected to state taxation.

C. Upon the inclusion in the net estate of propert, set forth in Schedule C in the amount of $34,926.69, (a) cash, $29,445.17, which represents the accruals from the Osage [fol. 23] headright payments as aforementioned, (b) $736.00 represents certain items of personal property which were purchased with funds accruing to the Osage headrights, and (c) the remainder of $4,745.52 represents the trust funds in the hands of the Treasurer of the United States, being decedent's share in the proceeds of the sale of the Osage Tribe's lands in Kansas, and which were credited to each Osage Indian, which have never been subjected to state taxation.

That under the express provisions of the Act of Congress approved March 2, 1929, (45 Stat. 1478) each and all of the aforesaid items of property belonging to said estate have heretofore been held and still continue to be held in trust by and subject to the supervision of the United States.

D. In the order assessing tax, total deductions of $6,507.86 have been allowed by your Honorable Commission. If this estate is ultimately found to be subject to tax, additional deductions authorized by law have not been taken into account, and an adjustment should be made thereon.

6. No authority has ever been granted by the Congress of the United States to the State of Oklahoma to levy a [fols. 24-25] tax upon the transfer of property owned by deceased Osage Indians.

Wherefore, your protestant requests an oral hearing before the Oklahoma Tax Commission and prays that the order assessing the tax entered herein on September 20, 1943, and notice of which was mailed to your protestant on September 28, 1943, be vacated, set aside and held for naught.

Mary Morton West, Protestant, by Frank T. McCoy,
John T. Craig, John R. Pearson, Her Attorneys.

[fol. 26] [File endorsement omitted]

BEFORE THE OKLAHOMA TAX COMMISSION

Oklahoma City, Oklahoma

Probate No. 4664, Osage County Court

In the Matter of the Assessment of Estate Taxes Against the ESTATE OF CHARLES WEST, JR., Deceased

STIPULATION AS TO CERTAIN FACTS—Filed July 13, 1944

Comes now Mary Morton West, Osage Allottee No. 192, protestant herein, by her attorneys Frank T. McCoy, John T. Craig, John R. Pearson, and Frank Mahan, and the Oklahoma Tax Commission of the State of Oklahoma, by its attorneys E. L. Mitchell, A. L. Herr and C. W. King, and stipulate and agree as follows:

1

That the Oklahoma Tax Commission was created by the laws of the State of Oklahoma, and, beside other things, was given the power and charged with the duty of assessing and collecting inheritance tax laid under the laws of the State of Oklahoma.

2

[fol. 27] That Charles West, Jr., was a restricted, full blood, adult unallotted Osage Indian, who died intestate September 2, 1940, while domiciled in and a resident in good faith of the State of Oklahoma where he had lived all his life; that no certificate of competency had ever been issued to him; that the said decedent left surviving him his mother, Mary Morton West, who is a full blood restricted Osage Indian and to whom his entire estate passed as his sole heir at law, except for an amount paid deceased's widow.

3

That all of the property and estate left by Charles West, Jr., is restricted property in the possession and under the control of the United States acting through the Secretary of the Interior.

4

That the United States retained in a separate account sufficient funds to pay the inheritance taxes, if any be finally adjudged to be due in this case. That Osage funds are paid to the United States Treasury and held by it undesignated as to members of Tribe but simply as the Osage Tribal Trust Fund.

5

That no penalty or interest be charged or collected for any time prior to thirty days subsequent to the recording [fol. 28] of the mandate after final decision herein.

6

That at the death of Charles West, Jr., he owned:

(a) 1 and 919/2520ths Osage Indian Mineral headrights, $10,235.12

(A mineral headright is the undivided 1/2229 part of all minerals in Osage County, Okla., formerly the Osage Nation, title to which minerals has been, is and will be held in trust by the United States until 1984 or such further time as Congress may provide—Globe Indemnity Co. v. Bruce, 81 F. (2d) 143, 1. c. 147-150, and has never been subjected to taxation.)

(b) Trust funds in U. S. Treasury, Accrued interest thereon ..... $ 4,745.52

(These funds have been held by the United States since before the Act of 1906, 34 Sta. 539, and have never been subjected to taxation.) .. 398.90

(c) Surplus funds in U. S. Treasury, ... $29,046.27

(Accumulated from bonus, royalty and rent from Osage Mineral Headrights, land rents and interest.)

(never subjected to taxation)

(d) United States bonds, value at death $70,949.31

(Purchased with restricted funds and held by the United States in its Treasury from funds accumulated as in (c) (Never subjected to taxation)

[fol. 29] (e) Building & Loan Stock, (Never subject to taxation) (Same as (d)) ..... $ 1,485.06

(f) Real estate other than homestead in Osage County, Oklahoma, inherited by deceased from restricted Osage Indians, (Restricted) Taxed.. $12,226.10

(g) 3/28ths interest in Masonic mortgage (Same as (d)) ..... $ 1,071.43

(h) Real estate in Osage County, Okla., purchased by United States with funds as in (c) Homestead. (Restricted) Taxed. ..... $ 5,000.00

(i) Real estate in Osage County, Okla. exempt from taxation under Osage acts as homestead (Restricted). ..... $ 1,833.33

(j) Restricted household furniture, (in home in Osage Co.) (Purchased by funds in c.) (Not taxed). 736.00

7

That the Oklahoma Tax Commission valued this estate at $132,727.04 gross, less deductions $21,507.86, including the basic $15,000.00 exemption, leaving subject to tax $111,-219.18 and assessed a tax thereon of $4373.15 and penalty of $940.20 making a total of $5,313.35. That such order was made on September 20, 1943, and notice given September 29, 1943.

8

That the only funds or property coming into the Adminis-[fol. 30] trator's hands was the sum of $5,606.50 released by the United States to him with which to pay claims and expenses of administration after approval of said claims by the Secretary of the Interior.

9

That said estate was retained by the United States in trust as theretofore after the final decree determining heirs dated July 13, 1942, except for homestead in City of Fairfax, exempt household furniture and the sum of $15,000.00 paid widow under contract settling heirship contest, which contract was approved by the Secretary of the Interior.

10

That the per capita payments to or for the original 2229 enrolled Osages or divided among their heirs for the calendar years in which the largest and smallest payments were made since they became of material size and for the year of the death of Charles West, Jr., are:

1924	$12,000.00
1933	598.00
1940	945.00

In 1940 these 2229 payments were divided among 4,087 [fols. 31-32] allottees and heirs of deceased allottees.

11

That each party reserves the right to introduce further testimony and evidence which is not inconsistent with the facts herein stipulated.

Dated this 1st day of July, 1944.

Mary Morton West, Protestant, by Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, her Attorneys; Oklahoma Tax Commission by E. L. Mitchell, A. L. Herr, C. W. King, its Attorneys.

[fol. 33] (File endorsement omitted)

BEFORE THE OKLAHOMA TAX COMMISSION

No. 1743

In the Matter of the Assessment of Estate Taxes against Charles West, Jr., deceased.

FINAL ORDER—Filed August 14, 1944

This cause coming on for hearing before the Oklahoma Tax Commission on the 14th day of July, 1944, The Commission being present by the Chairman, J. Frank Martin and J. D. Dunn, Vice Chairman; protestant appearing by its attorneys, Frank T. McCoy of Pawhuska, Oklahoma, and Frank Mahan of Fairfax, Oklahoma; and the Oklahoma Tax Commission appearing by Walter Harris, Director of the Inheritance and Estate Tax Division, and the Com-

mission being represented by E. L. Mitchell, A. L. Herr and C. W. King of the Legal Division, said Commission, after hearing the protest of the taxpayer and after having examined the returns of the taxpayer, the appraisement of the estate and property and assets of the said estate of Charles West, Jr., deceased, and after considering all of the evidence in the case takes said case under advisement; there- [fol. 34] after and on the 14 day of August, 1924, said Commission finds that each and all of the items mentioned in the stipulation of facts, save and except the inherited tax exempt Osage homestead, should be included in this gross estate and taxed under the Oklahoma inheritance, transfer and estate tax statutes, Title 68, Section 989, (a) to (t) inclusive, O. S. 1941.

That there is due as transfer, inheritance and estate taxes from the estate of the said Charles West, Jr., deceased, the amount of $4,263.15 and interest at the rate of 1 per cent per month thereon from the 2nd day of December, 1941.

It is the judgment and opinion of the Commission that if the amount of tax finally decreed to be due the State of Oklahoma from this estate shall be paid within 30 days from the recording of the mandate of the court in case of appeal from this order, that no interest or penalty should be charged.

It is, therefore, ordered, adjudged and decreed, by The Oklahoma Tax Commission that transfer, inheritance and estate taxes in the amount of $4,263.15 is hereby assessed against the said estate of Charles West, Jr., deceased, and ordered to be paid to the Oklahoma Tax Commission by [fol. 35] the said estate; that if said tax is paid within 30 days from the final judgment of the Commission or the recording of the mandate of the court in case of appeal, then no interest or penalty shall be assessed or collected; that if said tax is not paid within said time, there shall be paid the additional amount due as interest at the rate of 1 per cent per month from the 2nd day of December, 1941, to date of final payment.

Exception to this order having been taken by the taxpayer and notice of appeal to the Supreme Court of Oklahoma from this judgment and order of assessment having been given, this judgment and order shall be held in abeyance and shall be non-operative for a period of 30 days from date, and if appeal shall have been perfected to the

Supreme Court of the State of Oklahoma within said time, then said judgment shall be further held in abeyance until the final determination of the controversy by the court of last resort to which said cause shall be appealed.

Dated this 14 day of August, 1944.

Oklahoma Tax Commission, by —— ——, Chairman
J. D. Dunn, Vice Chairman; R. H. Sibley, Member.

Attest:
H. D. Canfield, (Seal) Secretary.

Approved:

Frank T. McCoy, Attorney for Taxpayer; C. W. King, Attorney for the Oklahoma Tax Commission.

[fol. 36] I do hereby certify that the above and foregoing is a true copy of the original document now on file in my office. Witness my hand and official seal of The Oklahoma Tax Commission this 14 day of August, 1944.

H. D. Canfield, Secretary, Oklahoma Tax Commission
(Seal.)

[fol. 37] [File endorsement omitted]

BEFORE THE OKLAHOMA TAX COMMISSION, OKLAHOMA CITY, OKLAHOMA

Case No. 1743

In the Matter of the Assessment of Estates Taxes against the ESTATE OF CHARLES WEST, JR., Deceased Unallotted Osage

Probate No. 4664 Osage County Court

NOTICE OF APPEAL—Filed August 19, 1944

To the Honorable Oklahoma Tax Commission:

You are hereby notified that the undersigned Mary Morton West, Osage Allottee No. 192, protestant herein, elects to appeal to the Supreme Court of the State of Oklahoma from the order of the Oklahoma Tax Commission entered herein on the 14th day of August, 1944, purporting to fix and determine the net value of the estate of the above named deceased and to compute and assess all inheritance,

estate and transfer taxes thereon, and for grounds of said appeal, among others, states:

1. That no tax is due under the decision of the Supreme Court of Oklahoma in the case of Childers v. Pope, 119 Okl. 300, 249 Pac. 726, or at least not the amount assessed.

2. That the aforesaid statute and the order of the Oklahoma Tax Commission herein violate the 14th Amendment [fol. 38] to the Constitution of the United States by imposing an estate tax on this estate or a part thereof which is constitutionally immune therefrom and abridge and deny this protestant privileges and immunities guaranteed to her by the Constitution of the United States, the Osage treaties and laws, and deprive her of her propery without due process of law and the equal protection of the law.

3. That said state act and the order of the Oklahoma Tax Commission herein, in violation of the 14th Amendment to the Constitution of the United States, Osage treaties and laws, impose an inheritance and transfer tax which includes in its measure property which protestant does not receive, to-wit: (a) the value of the corpus of the undivided portion of the minerals in and under Osage County held by the United States in trust for the Osage Tribe of Indians, from which decedent during his life was permitted to receive a part of the income; (b) the value of a portion of the Osage Trust Fund determined and held by the United States, from which the decedent during his life was permitted to receive a part of the interest thereon; (c) a fractional part of the money from Osage tribal minerals received and held in trust by the United States for the Osage Tribe after payment therefrom to the decedent during his lifetime of certain annuities as provided by law.

[fol. 39] 4. That said state act and the order of the Oklahoma Tax Commission herein, in violation of the Constitution of the United States, Osage Treaties and laws, impose on protestant an inheritance and transfer tax which includes in its measure property of the United States and property held by the United States in trust for the Osage Tribe of Indians in which decedent and this protestant had and have no individual vested property interest.

5. That said state act and the order of the Oklahoma Tax Commission herein, contrary to the 14th Amendment to the Constitution of the United States, Osage Treaties and laws, impose on protestant an inheritance and transfer tax which

includes in its measure property held in trust by the United States long prior to the admission of the State of Oklahoma into the Union and the enactment of its first inheritance and estate tax law, and under which trust no transfer thereof took place upon the death of decedent.

6. That said state act and the order of the Oklahoma Tax Commission herein would interfere with and defeat the United States in performing its governmental duty to the Osage Tribe of Indians, including this protestant, and diminish the trust estate, contrary to Osage treaties and laws, which trust estate is to be delivered by the trustee [fol. 40] to the remaindermen in 1983.

7. That the title to part of said property included in the measure of said tax is in the United States and is constitutionally immune from state taxation.

8. That if any property right passed at the death of the decedent to this protestant, it did so by virtue of federal law and not by state law.

9. That said state act and the order of the Oklahoma Tax Commission herein violate the rights of protestant and of the United States under Section 8 of Article 1 of the Constitution of the United States relating to commerce with the Indian Tribes.

10. That said state act and the order of the Oklahoma Tax Commission herein violate Section 1 of the Enabling Act (34 Stat. L. 267-278) of the State of Oklahoma.

11. That by reason of Constitutional immunity, said minerals, trust fund and proceeds from said minerals held by the United States in trust for the Osage Tribe have never been subjected to state taxation.

12. That Congress has never granted authority to the State of Oklahoma to levy a tax upon the transfer of property held in trust by the United States for the Osage Tribe [fol. 41] of Indians.

Wherefore said protestant prays that this notice of appeal be filed and made a part of the record in this case and that the said Oklahoma Tax Commission upon this, her request, prepare and furnish to said protestant proper and complete certified record in this cause as required by Title 68, Section 1474, O. S. 1941, so that this protestant may file said original with her petition in error attached thereto

with the Clerk of the Supreme Court within the time provided by said statute.

Mary Morton West, Protestant, by Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, her attorneys.

[fol. 42] Thereafter, and on the 17th day of August, 1944, the Oklahoma Tax Commission received of Mary Morton West, by her attorneys, Frank T. McCoy, John T. Craig, John R. Pearson and Frank Mahan, the sum of $4,263.15, the amount of tax assessed by the Oklahoma Tax Commission. Certificate of Acknowledgment of such payment is as follows:

[fol. 43]

McCoy, Craig & Pearson,

Attorneys at Law

Pawhuska, Oklahoma

Aug. 16, 1944

Oklahoma Tax Commission, State Capitol Office Building, Oklahoma City, Oklahoma.

In re: Charles West, Jr., Estate Tax, Probate No. 4664, Osage County, Oklahoma

GENTLEMEN:

We hand you herewith the sum of $4,263.15 out of said estate, being the amount of the tax assessed by you against the above estate. This tax is being paid under protest and after notice of appeal in this case and is to be held by the Tax Commission in a segregated fund pending the final determination of this cause and subject to distribution thereafter as provided by Title 68, Section 1474 O. S. 1941.

Protestant respectfully requests that you show in the certified record for the appeal of this case that the tax so assessed has been paid. Acknowledgment of receipt hereof will be appreciated.

Your very truly, Mary Morton West, Protestant, by Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, her attorneys.

FTM:F.
Enc.

[fol. 44] OKLAHOMA TAX COMMISSION, STATE OF OKLAHOMA
CERTIFICATE OF ACKNOWLEDGMENT

Re: Estate Tax—Charles West Jr., Deceased. Probate No. 4664. Osage County, Oklahoma

This is to certify that the records of this office disclose that on the 17th day of August, 1944, there was paid the sum of $4,263.15 in full satisfaction of Estate, Inheritance and Transfer taxes due the State of Oklahoma in the above estate, such payment being made under protest and subject to outcome of appeal from Commission's order.

Witness our hand and seal of office this 19th day of August, 1944.

Oklahoma Tax Commission, by J. Frank Martin, Chairman.

Attest: H. D. Canfield, Secretary. (Seal.)

Approved: Walter Harris, Director Estate & Inheritance Tax Division.

[fol. 45] Secretary's Certificate to foregoing transcript omitted in printing.

[fol. 46] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 31947

FLOYD O. YARBROUGH, Executor of the Estate of Dora Neal Rector, Osage Allottee No. 626, Deceased, Fred Rector, Kathleen Rector, Opal Rector, and Arthur B. Rector, Plaintiffs in Error,

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

No. 31948

MARY MORTON WEST, Osage Allottee No. 192, Plaintiff in Error,

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

STIPULATION FOR CONSOLIDATION—Filed September 26, 1944

It is hereby stipulated by and between the parties hereto that the above entitled causes may be consolidated for the purpose of briefing and oral argument in this Court.

The parties respectfully represent to the Court that the above entitled causes are complementary and that the two together present the necessary facts and questions of law [fol. 47] for a complete adjudication of the issues involved; that neither case could be properly briefed or argued alone. That counsel believe it will be of assistance to the Court as well as to counsel for this order to be entered and said cases briefed and argued together.

Dated this 19th day of September, 1944.

Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, Attorneys for Plaintiff in Error.
A. L. Herr, E. L. Mitchell, C. W. King, Attorneys for Defendant in Error.

[fol. 48] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

ORDER CONSOLIDATING CAUSES—Filed October 10, 1944

The Clerk is hereby directed to enter the following orders: October 10, 1944.

31,947: Yarbrough, Exr., etc. v. Oklahoma Tax Commission.

31,948: Mary Morton West, etc. v. Oklahoma Tax Commission. Ordered that the above styled and numbered causes be consolidated for the purposes of briefing and oral argument. Motion to advance granted; oral argument to be heard at a date to be set by the Court.

N. S. Corn, Chief Justice. Vivian S. Payne, Clerk.

[fol. 49] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 31947

FLOYD O. YARBROUGH, Executor of Estate of Dora Neal Rector, Deceased, Plaintiff in Error

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

and

No. 31948

MARY WEST, Plaintiff in Error,

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

SYLLABUS

The estates of deceased, fullblood, restricted, Osage Indians, except the allotted homestead, are subject to the estate, or transfer, or inheritance tax levied by the State of Oklahoma under the provisions of 68 O. S. 1941, secs. 988 et seq.

Appeal from the Oklahoma Tax Commission affirmed.

[fol. 50] Frank T. McCoy, John T. Craig, John R. Pearson, Pawhuska, Oklahoma; Frank Mahan, Fairfax, Oklahoma, for Plaintiffs in Error.

E. L. Mitchell, C. W. King, Oklahoma City, Oklahoma, for Defendant in Error.

OPINION—Filed June 18, 1946

BAYLESS, J.:

This appeal from the Oklahoma Tax Commission involves only the issue of the power of the State of Oklahoma to levy and collect an estate, transfer, and inheritance tax under 68 O. S. 1941, secs. 988 et seq., in the estate of Dora Neal Rector, deceased, who was a fullblood, allotted restricted Osage Indian. This person died leaving an estate consisting of (1) allotted homestead land; (2) allotted surplus land and land inherited from other Osages; (3) 2 and 13/252nds Osage Mineral Headright interests; (4) cash in the hands of the United States Treasurer derived from the income from the headright interests; and (5) cash in the hands of the United States Treasurer representing her share of the sale price of tribal lands in Kansas. It is conceded the allotted homestead is non-taxable and the Commission made no order taxing it under the above statute. The executor of Rector's estate appeals. There is a similar appeal [fol. 51] on the identical issue by the representative of the estate of Charles West, Jr., a deceased minor, unallotted Osage Indian, whose estate consisted of (1) 1 and 919/2520ths Osage Mineral Headright interests; (2) land purchased with funds derived from the headright interests and land inherited from other Osages; (3) cash in the hands of the United States Treasurer representing accruals of income from the headright interests; (4) personal property purchased with funds derived from the headright interests; and (5) cash in the hands of the United States Treasurer representing his share of the sale price of tribal lands in Kansas. These appeals are consolidated for presentation to us and decision. In addition to the briefs of the parties, briefs amicus curiae have been filed.

The methods of stating and treating the various law issues differ in these briefs, but essentially they all coincide on certain issues that determine the controversy. We shall treat these issues in an arrangement that tends to

our convenience but does not overlook any aspect of the vital issues raised.

Before directing our attention to the specific issues argued, we will discuss an aspect of these cases that inheres in the position of appellants and is an assumption that underlies virtually all of their arguments. It is both asserted and implied that there is no reason, and there should be no disposition on the part of this court, to delve into [fol. 52] this issue again. Briefly the main issue can be stated thus: No tax is due under an earlier decision of this court. See Childers v. Pope, 119 Okl. 300, 249 P. 726. In that case it was held that the portion of the estate of a restricted Indian consisting of land and mineral interests was not taxable under Oklahoma law. However, this holding was not original with this court; there is no language in it that manifests a concurrence in the rationale of the rule adopted, and it is obvious the opinion was forcedly adopted by the controlling circumstance of an intervening opinion by the Supreme Court of the United States. See Childers v. Beaver, 270 U. S. 555, 70 L. Ed. 730 (7). It will be observed in reading the Childers v. Pope opinion that this court remarked it was "not disposed to go further than the rule therein announced." (Beaver, supra), and expressly made subject to Oklahoma's taxing power, as an exception to the rule of the Beaver case, the personal property of the estate. The Beaver decision, as it related to land and mineral interests, was based on two grounds: (1) Such property descended by federal and not state law, and (2) The restrictions under which the federal government held some of the property of all Indians and all of the property of some Indians constitute a federal instrumentality that would be interfered with if subjected to state taxation. One of the best of reasons for again going into this issue, since our independent judgment was obstructed earlier, is the recent review and revision by the Supreme Court of the [fol. 53] United States of the rules of law of the earlier federal decisions on this branch of the law. The traditional federal court view of the non-taxability of the property of Indians is illustrated by U. S. v. Rickert, 188 U. S. 432, 47 Law Ed. 532 and Childers v. Beaver, supra. The alteration in this view is disclosed by Shaw v. Gibson-Zahniser Oil Corp., 276 U. S. 575, 72 Law Ed. 709; Supt. etc. v. Comm. Int. Rev., 295 U. S. 418, 79 Law Ed. 1517; U. S. v. Oklahoma Tax Commission, 131 Fed. (2) 635; Helvering v.

Mountain Producers Corp., 303 U. S. 376, 82 Law Ed. 907; Oklahoma Tax Commission v. U. S., 319 U. S. 598, 87 Law Ed. 1612, and the various decisions discussed therein. It is not an unfair summary of the two views to say that earlier the federal court decisions provided an almost complete immunity from taxation in any form where it appeared that any degree of wardship was exercised by the federal government toward the Indian (and too frequently this immunity was spread over non-Indians in their contractual relations with Indian property), whereas, lately the Indians' immunity from taxation is not implied but must be rested upon some plain base, and it no longer spreads over their contractual privies. In reviewing the earlier decisions on the so-called "federal instrumentality" rule, the Supreme Court of the United States stated (Helvering v. Mountain Producers Corp., supra), "In the light of the expanding needs of State and Nation, the inquiry has been pressed [fol. 54] whether this conclusion has adequate basis; • • • and the distinctions thus maintained have attenuated its teaching and raised grave doubt as to whether it should longer be supported,". In Oklahoma Tax Commission v. U. S., Supra, it was stated the instrumentality rule announced in the Beaver case, supra, "was in effect overruled." Thus if the Beaver opinion stood on no other basis than the instrumentality rule, it would no longer bar the State of Oklahoma in its effort to collect the tax involved. This alteration is sufficient justification for the State's renewed effort, an effort regarded as serious and persistent in the opinion in Oklahoma Tax Commission v. U. S., supra.

Previously we mentioned that the Beaver opinion stated, in addition to the instrumentality rule, another reason why the State of Oklahoma could not levy and collect the tax involved and this other reason is also urged against the State, with great stress, in the briefs. In short, as said in that opinion, "Apparently appellan*d* supposed that the land passed to the heirs by virtue of the laws of the State and were subject to the inheritance taxes which she laid. • • • The land really passed under a law of the United States, and not by Oklahoma's permission." Adopting this language and the language of the various Osage Acts and the decisions of the courts on a variety of issues arising thereunder, as well as other Indian laws, it is urged (1) that no title to this property ever vested in the Osages

but the title remains yet in the Federal government and thus [fol. 55] is not taxable, or (2) if title actually vested in the individual Osages, the devolution thereof is by virtue of Federal and not State law, thus depriving Oklahoma of the power to tax the transitus of this property from the Osage Indian to his heir or devisee.

We reject at once as untenable the assertion that the title to this property remained in the Federal government under the various laws applicable to the Osages. Globe Indemnity Co. v. Bruce, 81 Fed. (2d) 143, and In re Martin's Estate, 183 Okl. 177, 80 P. 2d 561. It will not serve any purpose useful to a decision in this matter to undertake to determine precisely what aspect of title remained in the Federal government or was assumed by it as an instrumentality to further its supervision of and duty toward Osage Indians under the restrictive terms of the allotment laws and subsequent laws. The case of Oklahoma Tax Commission v. U. S., supra, definitely establishes the rule that the levying of a tax such as this on the devolution of property similarly affected does not interfere with the Federal government. There is a distinct difference between the situation of Osage Indians and their property, under the Acts applicable to them, and the allottee and the property involved in U. S. v. Rickert, 188 U. S. 432, 47 Law Ed. 532, as is pointed out in Oklahoma Tax Commission v. U. S. supra, Osage Indians are full citizens of the State of Oklahoma. Osage Indians have title to their allotments, to their aliquot parts of the mineral headright interests, and land sale trusts, and the accumulations from these [fol. 56] sources in the Federal treasury. These properties are identifiable, subject to Constitutional and statutory protection, derive benefits for their owners, and pass by law at death. The title, if such it may be called, that rests in the Federal government is a mere instrument for service, whereas the title in the Indians is an individual, beneficial, and valuable thing.

We accept as final and binding upon us the rule in the Beaver case, above, that devolution of this property is by Federal and not State law. However, we cannot accept as logical the rule that because this is so, Oklahoma has no power to tax the transitus, either as an incident or with respect to the rights coincident therewith or arising therefrom. It is pointed out by the State that the Federal government levies an inherit-

ance tax on non-Indian citizens of Oklahoma although the devolution and transitus are by virtue of Oklahoma law. It is generally recognized that the Federal Constitution is the supreme law of the land, and within the Federal field, Federal statutes control and no State authority exists or can intrude, and likewise for the State Constitution and its statutes. No one would contend that Federal authority exists to direct or interfere with Oklahoma's power to legislate on descent and distribution with respect to non-Indian citizens. Oklahoma may permit or forbid the devising or [fol. 57] inheriting of property within its borders; it may permit succession on such terms as it chooses, and by what system. No Federal control may apply. If it is this power that gives rise to the right to levy an inheritance or succession tax, as indicated in the Beaver opinion, it may, with some degree of logic be asked by what authority does the Federal government tax our citizens in such instances?

Reconsideration of this problem caused the Supreme Court of the United States to say, in Oklahoma Tax Commission v. U. S., above:

> "It is true that our interpretation of the 1933 statute must be in accord with the generous and protective spirit which the United States properly feels toward the Indian wards, but we cannot assume that Congress will choose to aid the Indians by permanently granting them immunity from taxes which they are as able as other citizens to pay. It runs counter to any traditional concept of the guardian and ward relationship to suppose that a ward should be exempted from taxation by the nature of his status, and the fact that the federal government is the guardian of the Indian ward is no reason, by itself, why a state should be precluded from taxing the estate of the Indian. We have held that the Indians, like all other citizens, must pay federal income taxes. Superintendent of Five Civilized Tribes v. Commissioner of Internal Revenue, supra (295 U. S. [fol. 58] 421, 79 Law Ed. 1520, 55 S. Ct. 820). ('Wardship with limited power over his property' did not there 'without more render (the Indian) immune from the common burden'. A federal court has held, in a well reasoned decision defended before us by the Solicitor General of the United States, who is not a party to this action, that an Indian's estate is subject to the federal

estate tax. Landman v. Commissioner of Internal Revenue (CCA 10th) 123 F. (2d) 787. Congress cannot have intended to impose federal income and inheritance taxes on the Indians and at the same time exempt them by implication from similar state taxes. "Congress has passed laws under which Indians have become full-fledged citizens of the State of Oklahoma. Oklahoma supplies for them and their children schools, roads, courts, police protection and all the other benefits of an ordered society. Citizens of Oklahoma must pay for these benefits. If some pay less, others must pay more."

All of this is summed up in that opinion in these words: "Recognizing that equality of privilege and equality of obligation should be inseparable associates, we have recently swept away many of the means of tax favoritism." [fol. 59] In that opinion reference was made to the fact the federal government is collecting from Indian wards an income tax and an estate tax. In this appeal, our attention has been called to the fact that the federal government collects an estate tax on Osage estates. The Treasury Department's act in collecting such tax is based upon (1) the nature of the title of the Osage Indian and (2) the power of the Osage Indian to pass this property at his death. There is nothing in any of the decisions called to our attention that indicates that a power to levy an estate tax in the case of its Indian wards that is not possessed by the State of Oklahoma. As we understand the rule of immunity from taxation by reason of the wardship exercised by the federal government over Indians, including restrictions on alienation, it means a lack of power in either government to tax, not simply that the federal government has such power and Oklahoma has not.

If the title to this property yet remains in the federal government, as contended by appellants, that government certainly would not tax its own property. Yet the record and decisions disclose that the federal government does exact an estate tax in these and similar instances. If the federal government does not regard its position as guardian of the Indians as a bar to its exacting income and estate taxes from the Indians, it is a reasonable assumption that it does not look upon the protective restrictions placed around the Indians' property as affording tax immunity. The Supreme

Court of the United States said in Oklahoma Tax Commis-
[fol. 60] sion v. U. S. above, in referring to earlier federal court decisions establishing and extending tax immunity in favor of the Indian and his privies: "*None of these cases* hold, nor has this court ever decided, that congressional restriction of an Indian's income carried an implication of estate Tax exemption. * * * The immunity formerly said to rest on constitutional implication cannot now be resurrected in the form of statutory implication. * * * If congress intends to prevent the State of Oklahoma from levying a general non-discriminatory estate tax applying alike to all of its citizens, it should say so in plain words. Such a conclusion cannot rest on dubious inferences. 'Nontaxability and restrictions upon alienation are distinct things.' "

While this last cited and quoted case involved the estates of Creek Indians whose allotments and restrictions on alienation and the management of property rest on different laws, the general tone of the court's language in that decision clearly support the Oklahoma Tax Commission in this case.

The Order of the Oklahoma Tax Commission is affirmed.

Concur: Riley, Osborn, Welch, Corn, and Davison, JJ:

Dissent: Hurst, V. C. J.

[fol. 61] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed July 1, 1946

[fol. 62] Come now the plaintiffs in error in the above-entitled consolidated causes, and respectfully represent and show to the Court that on June 25, 1946, an opinion was handed down by this Court affirming the judgment and order of the Oklahoma Tax Commission assessing estate, transfer or inheritance taxes against the estates involved in said proceedings. Said plaintiffs in error respectfully show to the Court that said opinion and decision is unsound and

untenable upon the following grounds and for the following reasons, to wit:

1. Said opinion incorrectly states that the main issue in said appeals is whether or not the same are governed by the case of Childers v. Pope, 119 Okl. 300, 249 P. 726.

[fols. 63-64] 2. Said opinion incorrectly assumes the right of the federal government to collect an estate or inheritance tax upon Osage property.

3. Said opinion fails to give proper consideration to the proposition that estates of non-Indian citizens held under trusts comparable to the trust in which Osage estates are held are not subject to transfer, estate or inheritance taxes.

4. Said opinion overlooks the fact that the Federal government has never granted to the State of Oklahoma the right to levy the tax in question, as it did in the case of the Gross Production Tax on Osage minerals and in the case of "all State and Federal taxes" upon minerals of citizens of the Five Civilized Tribes.

5. The opinion fails to apply the well-settled principle of statutory construction, that re-enactment of legislation after judicial construction indicates legislative approval of such construction.

Wherefore, plaintiffs in error pray that a rehearing be granted herein, and that upon such rehearing due consideration be given to the propositions above mentioned.

Frank T. McCoy, John T. Craig, John R. Pearson, All of Pawhuska, Oklahoma; Frank Mahan, Fairfax, Oklahoma, Attorneys for Plaintiffs in Error.

[fol. 65] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 31947

FLOYD O. YARBROUGH, Executor of Estate of Dora Neal Rector, Deceased, Plaintiff in Error,

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

and

No. 31948

MARY WEST, Plaintiff in Error

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

SYLLABUS

1. The estates of deceased full-blood, restricted Osage Indians, except the allotted homestead, are subject to the estate, or transfer, or inheritance tax levied by the State of Oklahoma under the provisions of 68 O. S. 1941, Sec. 988, et seq.,

2. Our former decision in the case of In re Estate of Nah-Me-Tse-He- Childers v. Pope, 119 Okla. 300, 249 Pac. 726, is hereby expressly overruled in so far as that decision [fol. 66] announces the rule that all of the estate of a deceased Osage Indian is exempt from the estate or inheritance tax authorized and levied by this state. The overruling of such decision subject however to the following provisions of prospective application only as to assessment and collection of such tax on other estates to the extent stated in the opinion.

3. A court of final decision, in overruling a prior adopted principle established by its own earlier decisions, may ordinarily in its discretion preserve in the overruling opinion all rights accrued under the prior declaration, the same as if they had been created or arose out of a former existing statute later repealed by the Legislature.

4. This opinion shall operate prospectively only as to assessment and taxation of property of other estates affected hereby in the manner stated in the body of the opinion and for the reasons therein stated.

Appeal from the Oklahoma Tax Commission by Floyd O. Yarbrough, executor of estate of Dora Neal Rector, deceased, and by Mary West. Appeals consolidated.

Affirmed.

[fol. 67] Frank T. McCoy, John T. Craig, and John R. Pearson, all of Pawhuska, and Frank Mahan of Fairfax, Oklahoma, for Plaintiffs in Error.

E. L. Mitchell and C. W. King, both of Oklahoma City, Okla., for Defendant in Error.

OPINION—Filed October 28, 1947

BAYLESS, J.:

These appeals from the Oklahoma Tax Commission involve only the issue of the power of the State of Oklahoma to levy and collect an estate, transfer, and inheritance tax under 68 O. S. 1941, Sec. 988, et seq. on the estates involved. Dora Neal Rector, a full-blood, allotted, restricted Osage Indian, died leaving an estate consisting of (1) allotted homestead land; (2) allotted surplus land and land inherited from other Osages; (3) 2 and 13/252nds Osage mineral headright interests; (4) cash in the hands of the United States Treasurer derived from the income from the headright interest; and (5) cash in the hands of the United States Treasurer representing her share of the sale price of tribal lands in Kansas. It is conceded the allotted homestead is nontaxable and the Commission made no order taxing it under the above statute. Charles West, Jr., a deceased minor, unallotted Osage Indian, left an estate con-
[fol. 68] sisting of (1) 1 and 919/2520ths Osage mineral headright interests; (2) land purchased with funds derived from the headright interests and land inherited from other Osages; (3) cash in the hands of the United States Treasurer representing accruals of income from the headright interests; (4) personal property purchased with funds derived from the headright interests; and (5) cash in the hands of the United States Treasurer representing his share of the sale price of tribal lands in Kansas. These appeals are consolidated for presentation to us and decision. In

addition to the briefs of the parties, briefs amicus curiae have been filed.

Before directing our attention to the specific issues argued, we will discuss an aspect of these cases that inheres in the position of appellant and is an assumption that underlies virtually all of their arguments. It is both asserted and implied that there is no reason, and there should be no disposition on the part of this court, to delve into this issue again. Briefly the main issue can be stated thus: No tax is due under an earlier decision of this court, to-wit: Childers v. Pope, 119 Okla. 300, 249 Pac. 726.

In that case it was held that the portion of the estate of a restricted Indian consisting of land and mineral interests was not taxable under Oklahoma law. However, this hold-
[fol. 69] ing was not original with this court; there is no language in it that manifests a concurrence in the rationale of the rule adopted, and it is obvious the opinion was forcedly adopted by the controlling circumstance of an intervening opinion by the Supreme Court of the United States, to-wit: Childers v. Beaver, 270 U. S. 555, 70 L. ed. 730 (7). It will be observed in reading the Childers v. Pope opinion that the decision there was based solely on the rule of the Beaver case, supra, and in the Pope case this court remarked it was "not disposed to go further than the rule therein announced." (Beaver, supra), and expressly made subject to Oklahoma's taxing power, as, an exception to the rule of the Beaver case, the personal property of the estate.

One of the best of reasons for again going into this issue, since our independent judgment was obstructed earlier, is the recent review and revision by the Supreme Court of the United States of some of the rules of law of the earlier federal decisions on this branch of the law. The traditional federal court view of the nontaxability of the property of Indians is illustrated by United States v. Rickert, 188 U. S. 432, 47 L. ed. 532, and Childers v. Beaver, supra. The alteration in this view is disclosed by Shaw v. Gibson-Zahniser Oil Corp., 276 U. S. 575, 72 L. ed. 709; Supt. etc., v. Comm. Int. Rev., 295 U. S. 418, 79 L. ed. 1517; United States v. Oklahoma Tax Commission, 131 Fed. 2d 635;
[fol. 70] Helvering v. Mountain Producers Corp., 303 U. S. 376, 82 L. ed. 907; Oklahoma Tax Commission v. United States, 319 U. S. 598, 87 L. ed. 1612, and the various decisions discussed therein.

In Oklahoma Tax Commission v. United States, supra, it was stated: "Childers v. Beaver, 270 U. S. 555, 70 L. ed. 730, 46 S. Ct. 387, supra, was in effect overruled by the Mountain Producers Corp, decision." This alteration is sufficient justification for the state's renewed effort, an effort regarded as serious and persistent in the opinion in Oklahoma Tax Commission v. United States, supra.

We reject at once as untenable the assertion that the title to this property remained in the federal government under the various laws applicable to the Osages. Globe Indemnity Co. v. Bruce, 81 Fed. 2d. 143, and In re Martin's Estate, 183 Okla. 177, 80 P. 2d 561. It will not serve any purpose useful to a decision in this matter to undertake to determine precisely what aspect of title remained in the federal government or was assumed by it as an instrumentality to further its supervision of and duty toward Osage Indians under the restrictive terms of the allotment laws and subsequent laws. The case of Oklahoma Tax Commission v. United States, supra, definitely establishes the rule that the levying of a tax such as this on the devolution of property similarly affected does not interfere with the federal government. There is a distinct difference between the situation of Osage [fol. 71] Indians and their property, under the acts applicable to them, and the allottee and the property involved in United States v. Rickert, 188 U. S. 432, 47 L. ed. 532, as is pointed out in Oklahoma Tax Commission v. United States, supra. Osage Indians are full citizens of the State of Oklahoma. Osage Indians have title to their allotments, to their aliquot parts of the mineral headright interests, and land sale trusts, and the accumulations from these sources in federal treasury. These properties are identifiable, subject to constitutional and statutory protection, derive benefits for their owners, and pass by law at death. The title, if such it may be called, that rests in the federal government is a mere instrument for service, whereas the title in the Indians is an individual, beneficial, and valuable thing.

The Supreme Court of the United States said in Oklahoma Tax Commission v. United States, supra:

> "It is true that our interpretation of the 1933 statute must be in accord with the generous and protective spirit which the United States properly feels toward the Indian wards, but we cannot assume that Congress will choose to aid the Indians by permanently granting

them immunity from taxes which they are as able as other citizens to pay. It runs counter to any traditional concept of the guardian and ward relationship to suppose that a ward should be exempted from taxation by [fol. 72] the nature of his status, and the fact that the federal government is the guardian of the Indian ward is no reason, by itself, why a state should be precluded from taxing the estate of the Indian. We have held that the Indians, like all other citizens, must pay federal income taxes. Superintendent of Five Civilized Tribes v. Commissioner of Internal Revenue, supra, (295 U. S. 421, 79 L. ed. 1520, 55 S. Ct. 820). 'Wardship with limited power over his property' did not there 'Without more render (the Indian) immune from the common burden.' A federal court has held, in a well reasoned decision defended before us by the Solicitor General of the United States, who is not a party to this action, that an Indian's estate is subject to the federal estate tax. Landman vs. Commissioner of Internal Revenue (C. C. A. 10th) 123 F. 2d 787. Congress cannot have intended to impose federal income and inheritance taxes on the Indians and at the same time exempt them by implication from similar state taxes.

"Congress has passed laws under which Indians have become full-fledged citizens of the State of Oklahoma. Oklahoma supplies for them and their children schools, roads, courts, police protection and all the other benefits of an ordered society. Citizens of Oklahoma must [fol. 73] pay for these benefits. If some pay less, others must pay more."

All of this is summed up in that opinion in these words:

"Recognizing that equality of privilege and equality of obligation should be inseparable associates, we have recently swept away many of the means of tax favoritism."

In that opinion reference was made to the fact the federal government is collecting from Indian wards an income tax and an estate tax. In this appeal our attention has been called to the fact that the federal government collects an estate tax on Osage estates. The Treasury Department's act in collecting such tax is based upon (1) the nature of the title of the Osage Indian, and (2) the power of the Osage

Indian to pass this property at his death. There is nothing in any of the decisions called to our attention that indicates that the United States government has a power to levy an estate tax in the case of its Indian wards that is not possessed by the State of Oklahoma. As we understand the rule of immunity from taxation by reason of the wardship exercised by the federal government over Indians, including restrictions on alienation, it means a lack of power in either government to tax, not simply that the federal government has such power and Oklahoma has not.

If the title to this property yet remains in the federal government, as contended by appellants, that government certainly would not tax its own property. Yet the record and decisions disclose that the federal government does [fol. 74] exact an estate tax in these and similar instances. If the federal government does not regard its position as guardian of the Indians as a bar to its exacting income and estate taxes from the Indians, it is a reasonable assumption that it does not look upon the protective restrictions placed around the Indians' property as affording tax immunity. The Supreme Court of the United States said in Oklahoma Tax Commission v. United States, above, in referring to earlier federal court decisions establishing and extending tax immunity in favor of the Indian and his privies:

> "None of these cases held, nor has this court ever decided, that congressional restriction of an Indian's income carried an implication of estate tax exemption. • • • The immunity formerly said to rest on constitutional implication cannot now be resurrected in the form of statutory implication. • • • If Congress intends to prevent the State of Oklahoma from levying a general non-discriminatory estate tax applying alike to all of its citizens, it should say so in plain words. Such a conclusion cannot rest on dubious inferences. 'Non-taxability and restrictions upon alienation are distinct things.' "

While this last-cited and quoted case involved the estates of Creek Indians whose allotments and restrictions on alienation and the management of property rests on different laws, the general tone of the court's language in that decision clearly supports the Oklahoma Tax Commission in this case.

[fol. 75] Since our former decision in Childers v. Pope, supra, was based solely upon a following of the rule of Childers v. Beaver, supra, and since the Supreme Court of the United States in reviewing various former decisions has itself "in effect overruled" Childers v. Beaver, we are at liberty to depart from following it.

We conclude that the order of the Oklahoma Tax Commission should be affirmed, and this tax assessed against these estates to the extent heretofore stated.

The pronouncement of this rule and the overruling of Childers v. Pope, supra, constitutes a definite change in the application of this tax to certain property of estates. The result is that under this decision certain property of estates will be subject to this tax which under the former construction was not so taxable, and it is urged that we should restrict this rule change to prospective effect only as to other estates administered upon and closed prior to the effective date of this decision. Upon that point, we observe that the rule of our former decision, following Childers, v. Beaver, was established in 1926, and under that rule of non-liability of such estates to the tax here involved, it is a matter of common knowledge, as well as judicial knowledge that many estates have been administered upon and closed and titles vested with no thought that any such tax liability existed and without any demand for or effort to collect such a tax; and that the stability of titles might be grievously affected unless we set at rest, or permit to remain at rest, any question as to the liability of any such estates for any such tax. [fol. 76] It is suggested on the part of the Tax Commission that no intention exists to undertake to surmount the apparent difficulties and to seek to apply this rule of taxability to such estates heretofore closed. We fully agree with the thought that no such effort should be made, and to that end, and for the reasons stated, we deem it our duty, and clearly within our authority, to give the aforesaid prospective effect only to this change in such rule. See Oklahoma County v. Queen City Lodge No. 197, I. O. O. F. 195, Okla. 131, 156, Pac. (2d) 340, and the many authorities therein cited.

It is therefore adjudged that this rule change is adopted for only prospective application to other estates so as not to apply to other estates administered upon and closed prior to the date of this opinion. For the reasons stated,

and upon the consideration and conditions stated, the order of the Tax Commission is affirmed.

Davison, V. C. J. Bayless, Welch, Arnold and Luttrell, JJ: concur.

Riley, and Corn, JJ: concur in part and dissent in part, as to Prospective Operation Only.

Hurst, C. J. and Gibson, J. Dissent.

[fol. 77] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

DISSENTING OPINION—Filed October 28, 1947

HURST, C. J. (Dissenting):

Two questions inhere in this case, (1) may Oklahoma levy an estate tax upon the transmission of property, the legal title to which is vested in the United States, and which is held in trust for the benefit of an Indian tribe, where the only right of the deceased Indian allottee is to receive his aliquot portion of the income from the trust property as the United States government may from time to time elect to distribute it in the absence of an Act of Congress author-[fol. 78] izing such tax, and (2) did the Oklahoma Legislature intend to levy a tax upon the transmission of such right. I think both questions should be answered in the negative. We are not concerned with whether Congress should authorize such a tax to be levied, but rather whether it can be done without the consent of Congress.

1. The authorities relied upon in the majority opinion do not sustain the result reached. None of the cases relied upon involved a tax upon property held in trust by the United States for the benefit of its Indian wards. The Mountain Producers case, 303 U. S. 376, involved a tax upon the income of an oil and gas lessee of state lands, and it stands for the rule that the interest of the lessee is too remote to be protected from the levy under the rule exempting state instrumentalities from Federal taxation. The property involved in the other cases relied upon was owned in fee by the individual Indians, but the alienation of such

property was restricted. The Five Civilized Tribes case, 319 U. S. 598, recognizes the distinction between property owned in fee by individual Indians and property held in trust by the United States for their benefit, and cites United States v. Rickert, 188 U. S. 432, in making such distinction. The Rickert case has never been departed from. If, as there held, property held in trust by the United States for the Indian Allottee is not subject to state ad valorem taxa-
[fol. 79] tion without the consent of Congress, it would seem that the State cannot levy an estate tax on its transmission by the death of the allottee, without the consent of Congress.

Our decision should be based upon sound legal principles, and not upon what we understand to be the "tone" or trend of the recent decisions of the United States Supreme Court in other tax cases not involving the precise question here involved. After all it is the function of Congress and not that of the Courts to declare the policy of the United States with reference to its Indian wards. No remote Federal instrumentality is here involved, but rather the United States Government itself. Congress has not provided a method of collecting the tax and has not authorized those having the custody of the funds held in trust to disburse them for such purposes. 25 U.S.C.A. # 123 provides: "No money shall be expended from Indian tribal funds without specific appropriation by Congress." It is my view that until Congress expressly or by necessary implication authorizes the tax to be levied and collected, it cannot be done because of the implied immunity doctrine. The question of whether these headright interests are or may be taxed by the Federal Government is beside the point. The doctrine of implied immunity operates only to prevent one government from taxing the property or in-
[fol. 80] strumentalities of another government, and does not prevent a government from taxing its own property or instrumentalities. 61 C. J. 361, 371; 51 Am. Jur. 279.

2. Both this court and the Federal courts are committed to the rule that the descent of the property here involved is cast under the Federal statutes and not under the state statutes. See In re Pryor's Estate, — Okla. —, 181 P. 2d 979, and the cases there cited. Our estate tax statute purports to cover only such property of the decedent as passes "by will or the intestate laws of this State." 68 O. S. 1941 #989. Estate and inheritance taxes are excise taxes "im-

posed on the privilege of transmitting or receiving property upon the death of the owner." 28 Am. Jur. 12. See also 61 C. J. 1592. Our legislature did not express an intention to levy an estate tax on the privilege of transmitting property under the laws of the United States, and it seems elementary that it could not constitutionally do so. 61 C. J. 1604, note 41; 28 Am. Jur. 16, 90; In re Estates of Harnkess' 83 Okla. 107, 204 P. 911, 42 A. L. R. 399; Frick v. Pennsylvania, 268 U. S. 473, 69 L. Ed. 1058, 45 S. Ct. 603, 42 A.L.R. 316.

For the foregoing reasons, I respectfully dissent.

Gibson, J., concurs in this dissent.

[fol. 81] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

MOTION FOR ORDER STAYING MANDATES—Filed October 31, 1947

Come now the plaintiffs in error in the above-entitled consolidated causes, and respectfully show to the Court that they, and each of them, desire to appeal to the Supreme Court of the United States from the decision of this Court rendered herein on October 28, 1947, and that they desire that the mandate in each of said causes be stayed pending such appeals.

[fol. 82] Wherefore, plaintiffs in error pray the Court to enter an order herein staying the mandate in each of said above-styled causes pending the separate appeals herein of plaintiffs in error to the Supreme Court of the United States.

Frank Mahan, McCoy, Craig and Pearson, Attorneys for Plaintiffs in Error.

Affidavit of Mailing

STATE OF OKLAHOMA,
County of Osage, ss:

Jno. T. Craig, being duly sworn, upon his oath states that he is one of the attorneys for the above named plaintiffs in error; that on October 30, 1947, he enclosed a copy of

the above motion to stay mandates in an envelope addressed to Hon. C. W. King, one of the attorneys for the above-named defendant in error, at his office in care of the Legal Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma, and deposited the same, with postage thereon paid, in the United States post office at Pawhuska, Oklahoma.

Jno. T. Craig.

Subscribed and sworn to before me this 30th day of October, 1947. My Commission expires Dec. 3, 1949.

Eileen Souter, Notary Public. (Seal.)

[fol. 83] [File endorsement omitted.]

IN THE SUPREME COURT OF OKLAHOMA

ORDER STAYING MANDATES—Filed November 13, 1947

The Clerk is hereby directed to enter the following order:

31,947—Floyd O. Yarbrough, et al., v. Oklahoma Tax Commission.

31,948—Mary Morton West v. Oklahoma Tax Commission.

Ordered that mandate be stayed in the above consolidated causes until February 12, 1948; pending appeal to the Supreme Court of the United States, and thereafter until disposition of the appeal by said court if said appeal is filed within the above prescribed period.

Thurman S. Hurst, Chief Justice. Andy Payne, Clerk.

[fol. 84] [File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

MARY MORTON WEST, Osage Allottee No. 192, Appellant,

vs.

OKLAHOMA TAX COMMISSION, Appellee

PETITION FOR ALLOWANCE OF APPEAL AND PRAYER FOR REVERSAL—Filed November 24, 1947

To the Honorable Chief Justice of the Supreme Court of the State of Oklahoma:

Your appellant in the above-entitled cause, and appellant and plaintiff in error in the cause in the Supreme Court of Oklahoma, hereinafter referred to, considering herself aggrieved by the final decision and judgment of the Supreme Court of Oklahoma, entered on the 28th day of October, 1947, (which judgment became final on that day following a previous decision in said cause handed down on June 25, 1946, to which prior decision appellant had in due time filed her petition for a rehearing) in the cause entitled:

> "Mary Morton West, Osage Allottee No. 192, Plaintiff in Error, vs. Oklahoma Tax Commission, Defendant in Error, No. 31948"

on the docket of said court, affirming the order and judgment of the Oklahoma Tax Commission, hereby files her [fol. 85] petition for an appeal from said decision and judgment to the Supreme Court of the United States.

In the above-entitled cause in the Supreme Court of Oklahoma there is drawn in question the validity of a statute of the State of Oklahoma, to-wit, Sections 988 to 989t, inclusive, Title 68, Oklahoma Statutes 1941, on the ground of its being repugnant, as applied in this case, to the Fourteenth Amendment to the Constitution of the United States in that it deprives this appellant of her property without due process of law and denies to her the equal protection of the laws; further, being repugnant to treaties and laws of the United States relating to the Osage Tribe of Indians, and to Article I, Section 8, of the Constitution

of the United States, in that said statute, as applied to
estate of Charles West, Jr., deceased, impinges upon
right, power and authority of the United States to legis
for and on behalf of its Osage Indian wards, and upon
duty of the United States to execute and carry out the te
of an express trust assumed by the Federal Government
and on behalf of the Osage Tribe of Indians.

The decision and final judgment of the Supreme Cour
Oklahoma herein appealed from were in favor of the va
ity of said statute of the State of Oklahoma.

The Supreme Court of Oklahoma is the highest court
the State of Oklahoma in which a decision in this suit co
be had.

Appellant shows that this case is one in which, under
legislation in force, to wit: Section 237 (a) of the Judi
Code, as amended by the Act of February 13, 1925, and
Act of January 31, 1928 (28 U.S.C., secs. 344(a), 861a
review may be had in this court as a matter of right
appeal.

[fol. 86] This appeal is accompanied by an assignment
errors setting forth the grounds upon which it is conten
that the decision and judgment of the Supreme Court
Oklahoma should be reversed, and a statement particula
disclosing the basis upon which it is contended that
Supreme Court of the United States has jurisdiction
review said decision and judgment of the Supreme Cour
Oklahoma.

Wherefore, your appellant prays:

That an appeal may be allowed herein from the Supre
Court of Oklahoma to the Supreme Court of the Uni
States in order that said decision and judgment of the
preme Court of Oklahoma may be examined and revers
that a transcript of the material part of the record in
cause, duly authenticated, may be ordered to be prepa
and certified to the Supreme Court of the United States
provided by law; that an order may be made fixing
security to be required of appellant; that the cost b
tendered herewith by appellant may be approved; and t
there be issued to appellee a citation directing said appe
to appear in the Supreme Court of the United States
Washington, D. C., within forty days from the date her
and there to show cause, if any there be, why said decis

and judgment should not be reversed and speedy justice be done to the appellant in that behalf.

Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, Counsel for Appellant, Pawhuska, Oklahoma.

[fol. 87] Service of the foregoing petition for appeal and receipt of copy thereof at Oklahoma City, Oklahoma, this 24 day of November, 1947, is hereby acknowledged.

C. W. King, Counsel for Appellee, Oklahoma City, Oklahoma.

[fol. 87a] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 24, 1947

Appellant, Mary Morton West, Osage Allottee No. 192, for her assignment of errors herein, says that the Supreme Court of Oklahoma, in its decision and judgment in the cause entitled

> "Mary Morton West, Osage Allottee No. 192, Plaintiff in Error, vs. Oklahoma Tax Commission, Defendant in Error, No. 31948,"

erred in approving and affirming the order and judgment of the Oklahoma Tax Commission in a proceeding before said Oklahoma Tax Commission, being case No. 1743, in the matter of the inheritance tax on the estate of Charles West, Jr., Deceased, and wherein said Oklahoma Tax Commission entered an order and judgment assessing estate taxes against said estate. Upon review of such order and judgment of the Oklahoma Tax Commission the Supreme Court of Oklahoma erred in each of the following particulars, and in each such particular appellant was deprived of her property without due process of law, and was also denied equal protection of law, contrary to and in violation of the Constitution of the United States.

[fol. 87b] I. The Supreme Court of Oklahoma erred in affirming the order and judgment of the Oklahoma Tax

Commission, for the reason that in applying the Oklahoma estate or inheritance tax law to the estate of a restricted member of the Osage Tribe of Indians and to property of such estate the title to which is in the United States in trust for such restricted Osage Indian the judgment of said court is in direct conflict with former decisions of the Supreme Court of the United States and of Federal District Courts and Circuit Courts of Appeals in similar cases.

II. Said Court erred in affirming the order and judgment of the Oklahoma Tax Commission, for the reason that the United States government holds the property involved under a trust established by treaty and by Acts of Congress imposing upon the government the duty to deliver the corpus of the trust property to the individual members of the Osage Tribe at the end of the trust period. Application of the Oklahoma estate or inheritance tax law to such property and the exaction of the tax thereby provided for would interfere with such governmental duty and diminish the trust estate.

III. Said Court erred in affirming the order and judgment of the Oklahoma Tax Commission, for the reason that the corpus of such trust property does not become the property of the individual member of the Osage Tribe until the termination of the trust period, and the imposition of the Oklahoma inheritance or estate tax which includes in its measure property which was not the property of the decedent at the time of his death constitutes a denial of due process of law and of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United [fol. 87c] States.

IV. Said Court erred in affirming the order and judgment of the Oklahoma Tax Commission, for the reason that the immunity from state taxation of property held in trust by the United States for Osage Indians has never been withdrawn by Congress by any Act granting express permission to the State of Oklahoma to levy the tax in controversy.

For each of the errors specified above and because in each of said respects said decision and judgment of the Supreme Court of Oklahoma, in approving and affirming the order and judgment of the Oklahoma Tax Commission, deprives appellant of her property without due process of law, and denies to appellant the equal protection of the laws, appellant prays that said decision and judgment be reviewed by

the Supreme Court of the United States and there reversed and judgment rendered in favor of the appellant and for her costs.

Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, Counsel for Appellant.

[fol. 87d] Service of the foregoing assignment of errors and receipt of a copy thereof at Oklahoma City, Oklahoma, is hereby acknowledged this 24 day of November, 1947.

C. W. King, Counsel for Oklahoma Tax Commission.

[fol. 88] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed November 24, 1947

The petition of Mary Morton West, Osage Allottee No. 192, for an appeal in the above cause (being Case No. 31948, Styled Mary Morton West, Osage Allottee No. 192, plaintiff in Error, vs. Oklahoma Tax Commission, Defendant in Error, upon the docket of the Supreme Court of the State of Oklahoma) to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma, and the assignment of errors and the jurisdictional statement required by the rules of the Supreme Court of the United States being filed therewith, having been presented, and having been considered, together with the record of said cause, it is

Ordered, that an appeal be, and the same hereby is allowed to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Oklahoma prepare and certify a transcript of the record and proceedings in the above cause and transmit same to the Supreme Court of the United States so that same shall be delivered to said court last named within forty days from the date hereof.

[fol. 89] And the said appellant, having presented to the Chief Justice of the Supreme Court of Oklahoma a good and sufficient cost bond in the sum of Five Hundred Dollars

($500.00) as security, with Maryland Casualty Company, a corporation, as surety, conditioned that appellant prosecute such appeal to effect, and if said appellant fails to make her plea good, she shall answer and pay all costs; and said bond having been taken and examined by me, is approved.

The appeal shall operate as a supersedeas, and the mandate of this court is hereby stayed and the effectiveness of the judgment and order appealed from is hereby stayed pending the final determination of said appeal.

Dated this 24 day of November, 1947.

Thurman S. Hurst, Chief Justice of the Supreme Court of Oklahoma.

Attest: Andy Payne, Clerk, by Ethel C. Hammett, Deputy. (Seal.)

Service of the above and foregoing order allowing appeal and the receipt of a copy thereof is acknowledged by each of the undersigned this 24 day of November, 1947.

C. W. King, Counsel for the Oklahoma Tax Commission.

[fols. 90-91] Citation in usual form showing service on C. W. King, filed November 24, 1947, omitted in printing.

[fols. 92-93] Bond on appeal for $500.00 approved and filed November 24, 1947, omitted in printing.

[fols. 94-122] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

No. 31948

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed November 24, 1947

To the Clerk of the Above Named Court:

You are hereby requested and directed to make a transcript of the record in the above styled and numbered cause to be filed in the Supreme Court of the United States pursuant to an appeal allowed in said cause, and to include

in such transcript of the record the following, and no other, papers and *exhibits*, to-wit:

[fol. 123] 1. A full and complete transcript of the record certified to the Supreme Court of Oklahoma by the Oklahoma Tax Commission, under date of August 24, 1944, and filed in the Supreme Court of Oklahoma, with petition in error attached, on September 9, 1944, including the following:

(a) Petition in error (found in front of case-made):

(b) Estate Tax Return (page 2 of case-made):

(c) Notices from Oklahoma Tax Commission (pages 4, 5, and 6 of case-made):

(d) Order Assessing Tax (page 7 of case-made):

(e) Protest (pages 9-14 of case-made):

(f) Stipulation (pages 16-21 of case-made):

(g) Order (pages 23-25 of case-made):

(h) Notice of appeal (pages 27-31 of case-made):

(i) Letter to Oklahoma Tax Commission (page 33 of case-made):

(j) Certificate of Oklahoma Tax Commission (page 34 of case-made):

(k) Secretary's Certificate (page 35 of case-made):

2. Stipulation for consolidation (filed September 26, 1944):

3. Order for consolidation (filed October 10, 1944):

[fol. 124] 4. Opinion and decision of the Supreme Court of Oklahoma (dated June 18, 1946):

5. Petition for rehearing (filed July 1, 1946):

6. Opinion and decision of the Supreme Court of Oklahoma (dated October 28, 1947):

7. Dissenting opinion (filed October 28, 1947):

8. Motion for stay of mandate (filed October 31, 1947):

9. Order staying mandate (filed November 13, 1947):

10. Petition for appeal and prayer for reversal (filed November 24, 1947), with acknowledgment of service;

11. Assignment of Errors (filed November 24, 1947), with acknowledgment of service;

12. Jurisdictional statement (filed November 24, 1947), with acknowledgment of service:

13. Order allowing appeal and fixing cost bond (filed November 24, 1947), with acknowledgment of service:

14. Citation to appellee (filed November 24, 1947), with acknowledgment of service:

15. Cost bond with approval thereof and acknowle-gment of service (filed November 24, 1947):

16. Statement directing attention of appellee to paragraph 3 of Rule 12 of the Supreme Court of the United States, with acknowledgment of service (filed November 24, 1947):

17. Praecipe for transcript of record, with acknowledgment of service (filed November 24, 1947):

18. Statement of points to be relied upon, with acknowledgment of service (filed November 24, 1947):

19. A full, complete and accurate index of the record required by this praecipe.

Said transcript to be prepared as required by law and the rules of this court and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the Supreme Court of the United States on or before the 3rd of January, 1948.

[fol. 125] Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, Counsel for Appellant.

Service of the foregoing praecipe for transcript of record and receipt of copy thereof at Oklahoma City, Oklahoma, this 24 day of November, 1947, is hereby acknowledged.

C. W. King, Counsel for Oklahoma Tax Commission.

[fol. 126] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 127] Supreme Court of the United States

Statement of Points Intended to Be Relied Upon—Filed December 23, 1947

Comes now the appellant in the above-entitled cause, and hereby specifies the following points as those intended to be relied upon and urged by her in this appeal, to-wit:

1. The various classes of property involved were and are immune from taxation by the State of Oklahoma for

the reason that the title thereto is in the United States, and the Supreme Court of Oklahoma erred in holding to the contrary.

2. Under treaty between the United States and the Osage Tribe of Indians and by Acts of Congress the United States holds the property involved in trust for the Osage Tribe and its members, and imposition of the tax in controversy would interfere with the duty of the federal government with respect to such trust and diminish the trust estate.

3. The corpus of the trust property involved does not become the property of the individual restricted Osage Indian until the expiration of the trust period, already extended by Act of Congress until 1983 and 1984, and the inclusion of such property in the estate of the décedent for Oklahoma estate tax purposes constitutes a denial of due process of law and of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 128] 4. The immunity of the classes of property involved from state taxation has never been withdrawn by Congress. On the contrary, Congress has from time to time re-enacted legislation extending the trust period after judicial determination by the Supreme Court of the United States and other federal courts that property the title to which is in the United States in trust for Indians is exempt from state taxation without Congressional consent.

Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, Counsel for Appellant.

Service of the foregoing designation of points intended to be relied upon and receipt of a copy thereof at Oklahoma City, Oklahoma, is hereby acknowledged this 24 day of November, 1947.

C. W. King, Counsel for Oklahoma Tax Commission.

[fol. 129] SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed December 23, 1947

Comes now the appellant in the above entitled cause and hereby makes her designation of parts of the record to be printed, as follows:

1. Estate Tax Return;
2. Order Assessing Tax;
3. Notices from Oklahoma Tax Commission;
4. Protest;
5. Stipulation;
6. Order No. 17,874 assessing tax;
7. Notice of Appeal;
8. Certificate of Oklahoma Tax Commission to payment of tax;
9. Letter transmitting amount of tax to Oklahoma Tax Commission;
10. Secretary's Certificate of true transcript;
11. Petition in error filed in Supreme Court of Oklahoma;
12. Stipulation for consolidation of cases;
13. Order of consolidation;
14. Opinion and decision of the Supreme Court of Oklahoma dated June 18, 1946;
15. Petition for rehearing filed July 1, 1946;
16. Opinion and decision of the Supreme Court of Oklahoma dated October 28, 1947;
17. Dissenting opinion filed October 28, 1947;
18. Motion for stay of mandate filed October 31, 1947;
19. Order staying mandate filed November 13, 1947;
20. Petition for appeal and prayer for reversal, with acknowledgment of service;
21. Assignment of errors, with acknowledgment of service;

[fol. 130] 22. Jurisdictional statement, with acknowledgment of service;

23. Order allowing appeal and fixing cost bond, with acknowledgment of service;
24. Citation to appellee, with acknowledgment of service;
25. Cost bond with approval thereof and acknowledgment of service;

26. Statement directing attention of appellee to paragraph 3 of Rule 12 of the Supreme Court of the United States, with acknowledgment of service;
27. Praecipe for transcript of record, with acknowledgment of service;
28. Statement of points to be relied upon, with acknowledgment of service;
29. Designation of parts of record to be printed, with acknowledgment of service.

Frank T. McCoy, John T. Craig, John R. Pearson, Frank Mahan, Counsel for Appellant.

Service of the foregoing designation of parts of record to be printed and receipt of copy thereof at Oklahoma City, Oklahoma, this 24 day of November, 1947, is hereby acknowledged.

C. W. King, Counsel for Oklahoma Tax Commission.

[fol. 130a] [File endorsement omitted]

[fol. 131] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—January 19, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: Enter Frank T. McCoy. File No. 52,719, Oklahoma, Supreme Court, Term No. 489, Mary Morton West, Osage Allottee No. 192, Appellant, vs. Oklahoma Tax Commission. Filed December 23, 1947. Term No. 489 O. T. 1947.